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# THE LAW OF BUILDING SOCIETIES:

COMPRISING

*INCORPORATED BUILDING SOCIETIES;*

**BENEFIT BUILDING SOCIETIES UNDER THE ACT OF 1836;**

AND

**SOCIETIES NOT REGISTERED;**

WITH MODEL RULES, A PRACTICAL INTRODUCTION,  
A DIGEST OF THE STATUTES AND CASES,  
AND A COPIOUS INDEX.

BY

**ARTHUR SCRATCHLEY, M.A.,**

*Barrister-at-Law; Author of "The Practical Treatise on Building Societies;"*

AND

**EDWARD WILLIAM BRABROOK,**

*Barrister-at-Law; the Assistant Registrar of Friendly Societies for England.*

SECOND EDITION.

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## NOTICE.

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PART I. of the present work is founded on the law as determined by 37 & 38 Vict. c. 42 (1874), for the carrying through of which beneficial Act Building Societies were indebted to the statesman-like efforts and support of the Right Hon. S. H. Walpole and Mr. W. M. Torrens, M.P., and to the unremitting exertions of Mr. J. Higham and the other members of the Building Societies Protection Committee.

This Act has been amended, in matters of detail, since the first edition of this work was published, by the Building Societies Acts, 1875 and 1877.

Part II. applies to societies certified under the Act of 1836, and not incorporated under that of 1874.

Part III. relates to societies not registered under any Act. As it was passing through the press, the decision of the Court of Appeal in the case of

the *Padstow Total Loss and Collision Assurance Association* (20 Ch. Div. 137) has been reported. It confirms the statements we have made in that Part, and establishes that a society of more than 20 members, formed for the acquisition of Gain by the society or by its members individually, is not even entitled to be wound up as an Unregistered company under sect. 199 of the Companies Act, 1862. We must venture to add that, so far as regards the particular society which was the subject of the decision, we have been wholly unable to follow the reasoning by which their Lordships arrived at the conclusion that it was one for the acquisition of gain, either by the society or by any of its members. The contract of marine insurance is one purely of Indemnity, and when it is entered into by a Mutual Society, it is an agreement that each member shall sustain a small loss in order that one may be relieved of a great loss. Suppose 21 persons, each to have a ship worth 210*l.*, and 10*l.* in the Bank. They agree that, when one of the 21 ships is lost, each will apply his 10*l.* at the bank towards replacing the lost ship. When that has been done, each man has his ship as before, but each has lost his 10*l.* in the bank. Where is the gain to any? One man has not lost so much as he would have lost if the association had never existed; but 20 men have lost what they



would still have possessed. The society is really one for incurring loss by "the individual members thereof," except the one whose loss is mitigated. The metaphysical reasons by which their Lordships satisfied themselves that in his case "a diminution of a loss is a gain" would hardly have seemed so forcible to them if the question had been brought to the simple test of liability to Income tax. These considerations, however, are apart from the purpose of the present treatise as, with regard to Unregistered building societies, the effect of the decision is wholly satisfactory.

LONDON,

*September, 1882.*

### NOTE TO MODEL RULES.

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Rule 29, sect. 11, p. 232, the first half of this section should be omitted.

Rule 35, sect. 1, p. 238, the words "not exceeding \_\_\_\_\_" should be added.

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## INTRODUCTION.

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I. PREVIOUS to the year 1836, societies then "commonly called Building Societies" had (as we learn from the preamble to the statute 6 & 7 Will. 4, c. 82), "been established in different parts of the kingdom, principally amongst the industrious classes, for the purpose of raising by small periodical subscriptions a fund to assist the members thereof in obtaining a small freehold or leasehold property."

That Act was passed with the declared object of affording encouragement and protection to such associations, and it did accord to them, besides the privileges granted by the Friendly Societies Acts, the additional privileges (very valuable at that time) of Exemption from the usury laws, simplicity in forms of conveyance, power to reconvey by a mere endorsement under the hands of the Trustees for the time being, and exemption from Stamp duty on mortgages; but, with the view, it is probable, of restricting the operations of the societies formed thereunder to the classes amongst which Building Societies had originated, certain limitations were introduced, which, in practical application,

have been found to be inoperative. The result has been to widely extend the beneficial effect of the statute. Under it societies have been established, which have afforded the medium for the profitable investment of very great sums of money, and have assisted many thousands of persons in becoming the proprietors of their own houses.

II. Interesting information is afforded as to the extent of the operations of Building Societies under the Act of 1836, in the second report of Her Majesty's Friendly and Building Societies Commissioners published in 1872. They found their inquiry beset with difficulty, in consequence of the absence of any provision in that Act for requiring returns from societies, or for establishing any register of facts relating to them. Yet they gathered from the statistics laid before them that the number of Building Societies in existence in 1872 might be estimated at

2,000 in England,  
88 in Scotland,  
17 in Ireland,

their members at

800,000 in England,  
more than 20,000 in Scotland,  
nearly 4,000 in Ireland

their annual income at

£11,000,000 in England,  
119,000 in Scotland,  
20,000 in Ireland,



and their total assets at

£17,000,000 in England,  
1,286,000 in Scotland,  
645,000 in Ireland.

III. It may not be an extravagant estimate to suppose that since 1836, as many as 100,000 persons have become possessors of houses or land by means of Building Societies. In the county of Lancaster alone 1,592 societies were certified between 1836 and 1874 ; in that of Middlesex, 1,305 ; and the total number of Societies established in England and Wales under the Act of 1836, exceeded 5,250. The Act of 1836, however, though so widely beneficial in its application, was proved by experience to be defective in many particulars. It consists, not merely of its own clauses, but of so many of the clauses of 10 Geo. 4, c. 56 [1829], and 4 & 5 Will. 4, c. 40 [1834], (the statutes that in the year 1836, applied to Friendly Societies, but which have long since been repealed) as may be applicable to Building Societies. This unfortunate provision introduced much complication and uncertainty. For example : it left in doubt whether the section of 10 Geo. 4, c. 56, authorising an infant to become a member of a society applied to Benefit Building Societies ; and also whether the section which provided for Friendly Societies a method of voluntary Dissolution was one that might be made applicable to a Benefit Building Society.

IV. Again, Benefit Building Societies under the Act of 1836 (not being incorporated bodies), can only act through the medium of Trustees. Apart from the difficulty of inducing persons of standing to undertake the duties of trustees, there are many practical inconveniences in the tracing and proving of titles, which are increased by the circumstance that no public record of the names of trustees of Benefit Building Societies exists. The trouble thus caused is sometimes so great, that many solicitors advise their clients to have nothing to do with property that has passed through the hands of a Benefit Building Society.

Amongst other minor Defects in the Act of 1836, and the Acts of 1829 and 1834 incorporated with it, are—that a society cannot remove its place of business from the county in which it was first settled :—that a society has no right to alter the name under which it was first organised ;—and that the investment of surplus funds is considerably restricted.

V. Probably, however, the most serious disability under which Building Societies have hitherto suffered arises from the application to them of legislation subsequent to 1836, and the legal decisions founded thereon. By the Companies Act, 1862, sects. 199-208, it is provided that companies not registered under that Act may be wound up under it, but only compulsorily by the Court of Chancery. Legal decisions have established that Benefit Building Societies are within these sections, and cannot, therefore, come to an end volun-

tarily under that Act. An arrangement to dissolve by the express consent of every individual concerned, whether as an unadvanced or advanced shareholder, cannot easily be made; as it is always difficult and frequently impossible, to obtain such consent, since the various classes of members have very diverse interests. The ruinously costly process of compulsory winding up by the Chancery Division of the High Court is unsuited to the case of an insolvent Building Society; which, being an association with variable capital, requires a wholly different machinery from that applicable to a company with fixed capital established under the Companies Acts.

VI. Not merely the method of Winding up, but the consequences of winding up, as declared by decisions of the courts, have constituted a substantial grievance. Building Societies have been treated as "unlimited" Joint Stock Companies, and all the shareholders, whether in respect of advanced or unadvanced shares, as liable to be placed on the list of contributories in the character of partners, severally responsible for the whole of the debts. It speaks volumes for the general good management of these societies that so few have failed disastrously, but the risk of failure, and of consequent unlimited liability, has been a great drawback to many. In a few cases—probably numbered by units—winding up has involved not merely the loss of past investments, but also contributions towards the claims of outside creditors. The investors in Building

Societies have thought, however, and the legislature has adopted their view—that this is a risk never contemplated when the Benefit Building Societies Act of 1836 was passed, and one to which they ought never to have been exposed. They have accordingly sought and obtained a declaration from the legislature that henceforth investors in incorporated Building Societies are to be subject to no liability whatever, beyond the amount actually paid or in arrear on their shares.

VII. A complete removal of all these disabilities is effected by the statute 37 & 38 Vict. c. 42. The provisions of this Act apply to such societies certified under 6 & 7 Will. 4, c. 32, as obtain a certificate of incorporation under the new Act, and to all societies formed after the 2nd November, 1874 (as to which the Act of 1836 is wholly repealed). Such societies, whether terminating or permanent, may be established “for the purpose of raising, by the subscriptions of the members, a stock or fund for making advances to members out of the funds of the society upon security of freehold, copyhold, or leasehold estate, by way of mortgage,” and may:—

1. Hold land in the corporate name, so far as is necessary for the said purpose.
2. Foreclose the equity of redemption.
3. Raise funds by shares of one or more denominations, and of any amount, and either paid up in full, or to be paid by periodical or other subscriptions.

4. Borrow money within limits fixed by the Act (sect. 15).
5. Act under the common seal as a body corporate with perpetual succession until dissolved.
6. Issue preferential shares.
7. Change the corporate name (sect. 22), and the chief office (Act of 1877, s. 2).
8. Invest surplus funds upon the securities authorised by the statute (sect. 25).
9. Appoint trustees to become tenants of copyhold property, upon payment to the lord of the usual fines payable on the admission of a single tenant; or the lord may admit the society itself as tenant (sect. 28).
10. Pay sums not exceeding 50*l.* upon intestacy without administration (sect. 29).
11. Pays sums to the amount of 150*l.* due to a deceased intestate mortgagor, who leaves an infant heir, to his administrator (sect. 30).
12. Punish fraud by summary procedure (sect. 31).
18. Dissolve by agreement (sect. 32).
14. Unite with or transfer the business to another society (sect. 33), with the effect of immediately vesting all property in the united society or the transferee society (Act of 1877, s. 5).
15. Settle disputes as the rule directs (sect. 34).
16. Purchase or lease a building for conducting the business (sect. 37).
17. Admit a minor as a member (sect. 38).

18. Admit joint members (sect. 39).
19. Discharge a mortgage by receipt, without reconveyance (sect. 42).
20. Issue all documents, except mortgages, free of stamp duty (sect. 41).

VIII. Of the 5,250 or more societies certified under the Act of 1836, in England and Wales, 462 only had on the 31st December, 1881, become incorporated under the Act of 1874. Many of the others must have ceased to exist. Thus of the 1,592 societies certified in Lancashire, only 43 incorporated societies remain in existence and grouping them as in the parliamentary return, it is found that only 6 belong to the first group (societies from 19 to 35 years in existence), 11 to the second (from 13 to 18), and 26 to the third (5 to 12). The conclusion is obvious that the great bulk of the older societies were terminating societies and have run their course. On the other hand, of the 1,805 Middlesex societies, 110 incorporated societies are now in existence, of which 23, 51, 86, belongs to the three groups respectively:—the permanent principle having been adopted more generally in the south of England than in the north. Still more remarkable evidence of this is given by the county of Kent, which contributes 17 societies to the first group. It is impossible to ascertain what proportion this number bears to the total number certified in Kent, as the clerk of the peace for Kent has placed his own interpretation on the clause of the statute requiring him to send all certified rules to

the registrar, and has refused to send any but those of societies which apply for incorporation.

IX. The transactions of these societies have been found, now that annual returns are regularly supplied by them, greatly to exceed the amounts estimated by the commissioners. (See Art. II., *ante*.) In England and Wales, 380 societies, originally certified under the Act of 1836, now incorporated under that of 1874, had in the year 1880-81 an annual income of 14,633,093*l*. and assets amounting to 30,299,519*l*. The commissioners' estimate of the number of members, on the other hand, may have been in excess, as 347 of the societies returns only 237,007 members, a number which itself is subject to correction for cases of repeated entry in a society, and for the numerous instances in which the same person is a member of more than one society. The capital raised for these large transactions is contributed in the proportion of 18 millions sterling by the shareholders to 12 millions by depositors and other creditors, a proportion well within the limit laid down by the Act, which would indeed have allowed the borrowing of three times as much.

X. Since the passing of the Act of 1874, the establishment of Building Societies has continued at a rapid and it seems an increasing rate. From 2nd November, 1874, to 31st December, 1881, more than 1,113 societies were established in England and Wales, and some of them have succeeded in obtaining a considerable

amount of business. The returns of 668 of these new societies show a total of 135,028 members. 735 Societies return an aggregate income of 4,061,462*l.*, and 731 of them had total assets amounting to 6,650,864*l.* The proportion in which the capital is contributed by members and by the outside public happens to be almost precisely the same as that in the older societies,—which may serve to show that the more liberal modern legislation and the growth of the business of Building Societies have not tended to relax the prudential conditions which their managers have found by experience best to contribute to their prosperity and soundness.

XI. We thus get, for 1,115 incorporated societies, old and new, the aggregate of 18,694,555*l.* income and 36,950,383*l.* assets, an amount quite unsuspected before authentic information was to be had on the matter. How much has to be added in respect of unincorporated societies cannot be ascertained. When the returns are examined in detail, equally striking results appear. The seven largest societies (the Bradford 3rd Equitable, National “Freehold Land,” Liberator, Queen’s Manchester, Leeds Permanent, Halifax Permanent, and Temperance), possess between them one fourth of the income, and one fourth of the assets of all the incorporated societies in England and Wales. Five of them have assets exceeding 1,200,000*l.* Five have incomes exceeding 500,000*l.* The Queen’s has 13,389 members, the National 10,600. The seven



societies have between them one sixth of the whole number of members of the 1,015 societies which give that information.

XII. A study of the returns discloses some points in the practical working of Building Societies which are well worth the attention of their members. The first is the liability to loss by defalcation. One society returns a deficiency of 9,809*l.* attributable to this cause; another 2,201*l.*; another 755*l.*; another 15,089*l.* (more than the total amount of the shareholders' capital, so that, in this case, depositors and other outside creditors will be losers, while the members will get nothing back); another 2,122*l.*; another 864*l.*; another 1,182*l.*; another 541*l.*; another 680*l.*; another 1,112*l.*; another 749*l.*; another 840*l.*; and another 422*l.* Though these instances are neither numerous nor large when compared with the total number of societies and the magnitude of their transactions, they imply in the individual cases great, sometimes perhaps ruinous, loss and at best serious inconvenience. They point to defects of Audit and of supervision which ought to occupy the gravest attention of directors and members of societies.

XIII. A second point ascertainable from the returns is the extent to which societies have been in the habit of looking upon premiums, bonuses, and commission upon advances, which are really only forms of prospective interest, as realized profit. The Act is so clear on this point that societies have at last come

pretty generally to a better mind on this matter, and the more recent returns show that this error is not committed to anything like the extent it was formerly. There are still, however, some cases in which the law is evidently disregarded; as where a society on a capital of 5,000*l.*, represents that it has made a profit of 5,000*l.* in a few years. It seems strange that societies should require an Act of parliament to tell them that estimates of this kind are altogether fallacious and that whatever premium a borrower is supposed to pay for an advance, nothing is really received from him but a contract to pay an annuity, no part of the profit in which will be realised till it has been actually paid.

The returns for successive years furnished one instance which showed very clearly the error societies commit, apart from its illegality, when they treat premiums as assets. In the 1878 return a society stated its balance due on mortgage securities as 18,481*l.* showing a balance of unappropriated profit of 2,298*l.*, to which the registrar appended a remark, "These include premiums." For the year 1879, the society had to acknowledge that its balance due on mortgage securities had diminished to 7,620*l.*, and it returned as value of properties on hand 5,786*l.*, showing a balance deficient of 133*l.* It thus appeared that the necessity for realising some of the properties on which advances had been made proved not only that the assumed profit 2,298*l.* was wholly imaginary, but that the society had actually sustained a loss of at least 133*l.*

XIV. Not only, therefore, has the Building Societies Act, 1874, removed doubts as to important matters affecting Building Societies, confirmed some privileges, conferred others, and introduced very valuable improvements into the working of societies, but it has by an express provision effectually checked a great and growing evil in the false and exaggerated estimates societies were in the habit of placing on their profits. If it were for this provision alone, which prohibits treating prospective interest as an asset, the Act would have been a most useful and valuable one. The means taken for enforcing it, and the publication from year to year of an abstract of the returns for the information of the members of societies and the public generally, not only provide valuable information for the statist and the politician, but also tend to the better management of societies, and the prevention, detection, and correction of irregularities.

XV. The Act of 1874 introduces, also, important changes in the relation of these societies to the Government functionaries charged with the examination and safe custody of their rules. By the Acts of 1829 and 1834, incorporated in that of 1836, the rules of every society were to be submitted to the Barrister appointed to certify the rules of savings' banks, who after advising, if necessary, with the promoters of the society was to give a certificate that the rules were in conformity with law. He was then to return one copy to the society, and transmit the other

to the clerk of the peace, by whom they were to be enrolled and preserved for safe custody and inspection. A like course was to be pursued upon the society altering any of its rules. Notice of any alteration in its place of meeting was to be given by the society to the clerk of the peace. This, however, was all that any person representing the State had to do with the affairs of a Benefit Building Society, until it reached the Court of Chancery in a compulsory winding up. No returns were required from the societies, nor had they access to any central office, at which their document would be recorded, other than that of the clerk of the peace for the county.

XVI. The Act of 1874 has altered this state of things, both with respect to subsisting societies and to societies established after its commencement.

It provides (sect. 7) that all things required to be done by or sent to the barrister or advocate and the clerk of the peace, under the provisions of 6 & 7 Will. 4, c. 32 (the Building Societies Act of 1836), shall be done by or sent to the Registrar of Friendly Societies (*a*) (sect. 3) on and after the 2nd November, 1874 (sect. 2). With regard to all societies established after that date, and to all subsisting societies which obtain a certificate of incorporation under it, the new Act repeals the 6 & 7 Will. 4, c. 32, ss. 7—13, and

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(*a*) By sect. 10 of the Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), the Registrar of Friendly Societies is for England the central office, which acts under its seal.

confers the following additional powers and functions upon the Registrar of Friendly Societies :—

1. To apply for and receive from the clerks of the peace of every county, riding, or division, city or borough, liberty or place, all transcripts of the rules of societies certified and enrolled under 6 & 7 Will. 4, c. 82, now filed with the rolls of the sessions of the peace ; and henceforth to keep and register such transcripts, and, upon application, to grant a certificate of incorporation to every such society (sect. 10).
2. To accept from any subsisting society, the transcript of whose rules is not received from the clerk of the peace, a copy of its rules ; to require such authentication thereof by statutory declaration as may appear to the Registrar to be necessary, and thereupon to grant a certificate of incorporation to such society (sect. 11).
3. To require of every person making an application for a certificate of incorporation for any society, evidence by statutory declaration of his authority to do so (sect. 12).
4. To receive from the persons intending to establish a society under the Act, two signed copies of their rules ; to examine whether such rules contain all the provisions set forth (under 14 heads) in sect. 16 of the

- Act, and are in conformity with the Act ; if so, to return one copy to the society with a certificate of incorporation, and to retain and register the other copy ; provided that a new society is not to be registered in a name identical with or too closely resembling that of a society already registered (sect. 17).
- . To receive from every society altering, adding, or rescinding a rule, two signed copies of the alteration, addition, or rescission, with a statutory declaration ; to examine whether it is in conformity with the Act ; if so, to return one copy to the society with a certificate of registration, and to retain and register the other copy (sect. 18).
  6. To grant certificates and documents which shall be received as evidence (sect. 20).
  7. To receive from any society changing its name notice of such change ; to examine whether the new name is identical with or too closely resembles that of any other registered society ; and, if not, to register the change and give a certificate of registration (sect. 22).
  8. To receive from any society having stock in the Bank of England (or Ireland) an application for its transfer from any absent, bankrupt, insolvent, lunatic, or deceased trustee—to require proof of the facts—and, when satisfied, to direct the transfer of the stock into the names of any other persons as trustees by the

surviving or continuing trustees, or by the officer of the bank (sect. 26).

9. To receive from any society dissolved by consent copies of the instrument of dissolution and of any alterations therein, and to register them in the same manner as the rules of the society; and to receive and register notice of the commencement and termination of every dissolution or winding up of a society (sect. 32).
10. To receive from any society uniting with, or transferring its engagements to another, notice of the union or transfer, and to register it (sect. 33), with the effect of vesting all its property in the united society or the transferee society (Act of 1877, s. 5).
11. To determine disputes in any society whose rules direct disputes to be referred to the Registrar, or when the parties to the dispute agree to refer it to the Registrar (sect. 34).
12. To make a final and binding award on any dispute so referred, or to state a case for the opinion of the supreme court on any question of law; to grant to either party any discovery that might be granted by a court of law or equity, and to determine by what officer of the society discovery shall be made (sect. 36).
13. To receive from every society a copy of its annual account and statement within fourteen

days after the meeting at which it is presented (sect. 40).

14. To make complaint, before justices, of any society, established after 2nd November, 1874, or persons, acting as such without being duly incorporated, or making default in forwarding returns or information, or in inserting in deposit books or acknowledgements or securities for loan the matters required by sect. 15 of the Act or making wilfully false returns, and to recover a penalty not exceeding 5*l.* for every offence (sect. 43).
15. To require payment of such fees as the Secretary of State appoints for the registration and inspection of documents (sect. 44); and to give certificates in the form contained in the schedule to the Act of 1877.
16. To receive notice of change of chief office, to register it, and to give a certificate of registry (Act of 1877, s. 2).

XVII. Hitherto the only duties of the barrister in respect to Benefit Building Societies have been :—

1. To receive from the persons intending to establish a society under the 6 & 7 Will. 4, c. 92, two signed copies of their rules, to examine whether the rules were in conformity with law and with the provisions of that statute; if so, to return one copy to the society with



a certificate to that effect, and to send the other copy to the clerk of the peace.

2. To receive from every society altering, adding, or rescinding a rule, two signed copies of the alteration, addition, or rescission, with a statutory declaration, to examine whether it is in conformity with law and with the provisions of the statute ; if so, to return one copy to the society with a certificate to that effect, and to send the other copy to the clerk of the peace.

XVIII. None of the other duties and powers which the new Act gives to the Registrar have been hitherto exercised by the Barrister with regard to Benefit Building Societies ; though most of them have been exercised by the Registrar with respect to Friendly Societies, Industrial and Provident (Co-operative) Societies, and Trade Unions. The tendency of the legislation of 1874 is, therefore, towards rendering more nearly uniform the provisions of the law relating to the various classes of societies with which the Registrar will have henceforth to deal (*a*).

XIX. The Act of 1836 is not repealed with regard to any societies which do not obtain a certificate of

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(*a*) The reader who is interested in tracing the anomalies of past legislation on the matter, is referred to an abstract and tabular statement of the duties of the registrar and barrister, with respect to the various classes of societies, prepared by the assistant registrar for England, and published at pages 116 to 124 of the Fourth Report of Her Majesty's Friendly Societies Commissioners, 1874.

incorporation. It has been thought desirable, therefore, to give in Part II of the present work a statement of the provisions of the Act of 1886, and those of 1829 and 1884, which are embodied in it, so far as it would seem they continue to apply to unincorporated societies. It might have been expected, however, that few societies would have cared to remain without a certificate of incorporation (a).

Societies will by becoming incorporated, and by the operation of the vesting clause in the Act of 1874 (s. 27), as now amended by the Act of 1877 (s. 3), dispose finally of the many troublesome questions which arise from trusteeship.

The statement of the law affecting unincorporated societies is of importance however as by many societies the application for incorporation has for some reason or other not been made.

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(a) It may be worth mentioning, as one of the curious accidents, that occur in the progress of legislation, that an inversion of the words of section 8 of the Act of 1874, happened (it is believed unintentionally) during the progress of the bill in the House of Lords. According to the amendment, as prepared by the draftsman (who is one of the authors of the present work), the clause would have read "Every society the rules of which have been certified under the said repealed Act, *may obtain a certificate of incorporation under this Act, and thereupon* shall be deemed to be a society under this Act, and its rules shall, &c." As actually passed by their lordships, the clause reads as follows: "Every society, the rules of which have been certified under the said repealed Act *shall be deemed to be a society under this Act,* and may obtain a certificate of incorporation under this Act, and thereupon its rules shall &c." The transposition of words, it will be seen, made a considerable alteration in the sense of the section, and was remedied by the short Act of 1875.

XX. Neither the Benefit Building Societies Act of 1836, nor the Building Societies Acts (1874 to 1877), give power to societies to hold or traffic in Land, except in the case of incorporated societies so far as may be necessary for the purpose for which the society is established. By an Act passed in 1871 (34 & 35 Vict. c. 80), however, societies might have been established under the Industrial and Provident Societies Acts, 1862, 1867 (25 & 26 Vict. c. 87 ; 30 & 31 Vict. c. 117), and under the Industrial and Provident Societies Act, 1876 (39 & 40 Vict. c. 45), societies may now be established :—

1. For the purpose of carrying on the trade of the buying and selling land, both wholesale and retail ;
2. And the members of the society become a body corporate, by its registered name, having a perpetual succession and a common seal ;
3. With limited liability ;
4. With power to hold, purchase, take on lease, sell and mortgage land ;
5. The society may, from time to time, erect any houses, cottages, or other buildings on any lands, from time to time, held by the society ;
6. And alter and pull down, and again rebuild any buildings, whether erected by the society or otherwise vested in it ;
7. And manage, lay out, lease and sub-lease (whether at rack-rent, on building, mining,

- quarrying, or improving leases or otherwise howsoever, and whether to members of the society or other persons) any lands or buildings for the time being held by the society ;
8. And may by its rules provide for the advancing of money by the society to members on the security of real or personal property ;
  9. And the rules or a schedule thereto may prescribe the forms of conveyance, surrender admittance, mortgage, transfer, agreement, bond, or other instrument necessary for carrying the purposes of the society into execution ;
  10. And lastly, the society may discharge mortgages by a receipt endorsed.

**XXI.** Under this Act as under the Building Societies Act, 1874 :—

1. The society being a body corporate, with perpetual succession and a common seal, performs all acts in its corporate name, without the intervention of trustees.
2. It has a registered office which it may change from time to time, without restriction as to county.
3. All documents relating to it are in the charge of the Registrar of Friendly Societies, who grants a certificate of incorporation, records the place of meeting, &c., and is empowered to enforce obedience to the law.

4. A society may, subject to the approval of the Chief Registrar, change its name, and the Registrar is not to register any society by the same name as that of an existing society.

XXII. The foregoing statement may enable the framers and legal advisers of societies to form a judgment as to the advantages of registration under the Industrial and Provident Societies Act, 1876. It is not, however, within the scope of this work to enter into the specialities of legislation with respect to Industrial and Provident Societies. For them the reader is referred to other works by the same authors.

XXIII. Notwithstanding the advantages offered by either of the alternative courses of registry as a Building Society, or as an Industrial and Provident Society, it is the fact that many societies exist and others did exist and have ended in disaster, which have carried on the business of a Building Society without any legal status whatever. The restrictions on the shares and interests of individual members are not a sufficient explanation of this state of things; nor is it easy to fathom the reasons which have induced so many provident people to put their savings in peril. It is within our knowledge that some of these unenrolled clubs have made advances of several thousands of pounds upon single properties, and their dealings in the aggregate must be of very large amount. Though the Act of 1874 has removed all reason, if any ever existed, for such societies remaining outside the pro-

tection of the law, it may be that some of them will not be disposed to accept its provisions. Hence it has been thought worth while to add to this work a short chapter on the legal position of such unregistered clubs, which it is hoped may enlighten their members as to the risks they run, and the advantages of registration.

XXIV. Model Rules, suitable for a Building Society have been added ; and a Digest is given of the law as it at present stands, including all those cases which are applicable to it in its altered state. The Regulations of the Secretary of State, as amended in March, 1882, and the Forms thereto annexed, are printed at length, as many societies have suffered considerable inconvenience for want of knowing their provisions. An Act of Sederunt of the Court of Session regulating winding up in Scotland is also added.

# THE LAW OF BUILDING SOCIETIES.

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## PART I.

### INCORPORATED BUILDING SOCIETIES.

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37 & 38 Vict. c. 42.

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# THE BUILDING SOCIETIES ACT, 1874.

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87 & 88 VICT. CAP. 42.

*An Act to consolidate and amend the Laws relating to Building Societies.* [30th July, 1874.]

WHEREAS it is expedient to consolidate and amend the law relating to building societies : Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :—

1. *Short title.*—This Act may be cited as “The Building Societies Act, 1874.”

2. *Commencement of Act.*—This Act shall commence and take effect on the second day of November, one thousand eight hundred and seventy-four.

3. *Definition of Registrar.*—The registrar in this Act means (except where otherwise expressed) the registrar for the time being of friendly societies in England, Scotland, or Ireland, as the case may be, who shall, for the purposes of this Act, be the registrar of building societies (a).

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(a) Formerly the rules and alterations of rules of Benefit Building Societies were submitted under 6 & 7 Will. 4, c. 32 ; 10 Geo. 4, c. 56 ; 4 & 5 Will. 4, c. 40, to the barrister appointed to certify the rules of savings banks, who had, however, always been the same person as the registrar of friendly societies. The

4. *Definition of court.*—The court in this Act means,—

In England, the county court of the district in which the chief office or place of meeting for the business of the society is situate ;

In Scotland, the sheriff's court of the county in which such office or place of meeting is situate ; and

In Ireland, the civil bill court within the jurisdiction of which such office or place of meeting is situate.

5. *Definition of terminating and permanent societies.*—A terminating society in this Act means a society which by its rules is to terminate at a fixed date, or when a result specified in its rules is attained ; a permanent society means a society which has not by its rules any such fixed date or specified result at which it shall terminate (a).

6. *Application to Scotland.*—In the application of this Act to Scotland the following words and expressions shall have the meanings hereby assigned to them ; viz., “ freehold estate ” shall mean “ heritable estate ; ” “ mortgage ” shall mean “ conveyance or bond and disposition in security ; ” “ letters of administration ” shall mean “ confirmation ” (b).

office of registrar of friendly societies was constituted by 9 & 10 Vict. c. 27 (1846) and is now regulated by 38 & 39 Vict. c. 60, s. 10. The registrar is for England the Central Office, which consists of a chief registrar and an assistant registrar, either or both of whom may do any act required to be done by the registrar. Their acts as registrar are authenticated by the seal of the Central Office. See Regulation 25, *post*.

(a) This provision is new ; when the Act of 1836 first came into operation, all societies were terminating.

(b) “ Freehold estate,” see s. 13 ; “ mortgage,” see ss. 13, 14, 15, 16, 19, &c. ; “ letters of administration,” see s. 29.

7. *Repeal of 6 & 7 Will. 4, c. 82.*—The Act of the sixth and seventh years of His late Majesty King William the Fourth, chapter thirty-two, intituled “An Act for the Regulation of Benefit Building Societies,” is hereby repealed, but this repeal shall not affect any subsisting society certified under the said Act, until such society shall have obtained a certificate of incorporation under this Act; and this repeal shall not affect the past operation of the said Act, or the force or operation, validity or invalidity, of anything done or suffered, or any bond or security given, or any right, title, obligation or liability accrued, or any proceedings taken thereunder, or under the rules of any society which has been certified thereunder: provided that with regard to such subsisting societies as may not obtain certificates of incorporation under this Act, all things required to be done by or sent to the barrister or advocate and the clerk of the peace under the provisions of the said repealed Act shall be done by or sent to the registrar (c).

8. [*Societies under former Act to continue.*—Every society, the rules of which have been certified under the said repealed Act, shall be deemed to be a society under this Act, and may obtain a certificate of incorporation under this Act, and thereupon its rules shall, so far as the same are not contrary to any express provisions of this Act, continue in force until altered or rescinded as hereinafter mentioned] (d).

9. *Incorporation of societies.*—Every society now subsisting or hereafter established shall, upon receiving a certificate of incorporation under this Act, become a body corporate by its registered name, having perpetual succession, until terminated or dissolved in manner herein provided, and a common seal (c).

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(c) These provisions are new.

(d) This section is repealed and other provision made by 38 & 39 Vict. c. 9, see p. 54, *post*.

10. *Enrolments to be sent to registrar.*—On the commencement of this Act all transcripts of the rules of societies certified and enrolled under the said repealed Act, which are now filed with the rolls of the sessions of the peace of any county, riding or division, city or borough, liberty or place, shall, on a proper application made for that purpose, be taken off the file and transmitted by the clerk of the peace to the registrar, to be by him kept and registered; and upon such registration every such subsisting society shall be entitled to a certificate of incorporation on application to the registrar (a).

11. *Where enrolled transcript of rules not transmitted.*—Any society now subsisting, the transcript of the rules of which is not transmitted to the registrar by the clerk of the peace, shall, upon furnishing the registrar with a copy of its rules, purporting to be certified or to be a true copy of rules certified by the barrister under the said repealed Act, authenticated by statutory declaration of the secretary or other officer of the society, as the registrar may require, be entitled to a certificate of incorporation, and such copy of rules shall be by him kept and registered (a).

12. *Certificate of incorporation how to be granted.*—A certificate of incorporation under this Act shall not be granted to an existing society except upon application to the registrar made by authority of a general meeting of the society specially called for the purpose; and the registrar may require of the person making the application a statutory declaration that such authority was duly given (a).

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(a) These provisions are new. The "proper application" under s. 10 would seem to be an application from the registrar, including all certified societies on the rolls. Such an application was made by the registrar on the commencement of the Act to every clerk of the peace, and was complied with by most of them.

13. *Purpose for which societies may be established.*—Any number of persons (b) may establish a society under this Act, either terminating or permanent, for the purpose of raising by the subscriptions of the members a stock or fund for making advances to members out of the funds of the society upon security of freehold, copyhold or leasehold estate, by way of mortgage; and any society under this Act shall, so far as is necessary for the said purpose, have power to hold land with the right of foreclosure, and may from time to time raise funds by the issue of shares of one or more denominations, either paid up in full or to be paid by periodical or other subscriptions, and with or without accumulating interest, and may repay such funds when no longer required for the purposes of the society: provided always, that any land to which any such society may become absolutely entitled by foreclosure, or by surrender, or other extinguishment of the right of redemption, shall as soon afterwards as may be conveniently practicable be sold or converted into money (c).

14. *Limitation of liability of members.*—The liability of any member of any society under this Act in respect of any share upon which no advance has been made shall be limited to the amount actually paid or in arrear on such share, and in respect of any share upon which an advance has been made shall be limited to the amount payable thereon under any mortgage or other security or under the rules of the society (d).

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(b) The number cannot, however, be less than three. See sect. 17.

(c) In this section the restrictions on the amount of share and amount of monthly or other subscription contained in 6 & 7 Will. 4, c. 32, s. 1, are omitted. It will be observed, however, that the right to hold land is strictly limited to the purposes of the society and the exigencies of each case, and is not general as in Industrial and Provident Societies or Friendly Societies.

(d) This provision is new.

15. *Power to borrow money.*—With respect to the borrowing of money by societies under this Act, the following provisions shall have effect :

- (1.) Any society under this Act may receive deposits or loans, at interest, within the limits in this section provided, from the members or other persons, or from corporate bodies, joint stock companies, or from any terminating building society, to be applied to the purposes of the society :
- (2.) In a permanent society the total amount so received on deposit or loan and not repaid by the society shall not at any time exceed two-thirds of the amount for the time being secured to the society by mortgages from its members :
- (3.) In a terminating society the total amount so received and not repaid may either be a sum not exceeding such two-thirds as aforesaid, or a sum not exceeding twelve months' subscriptions on the shares for the time being in force :
- (4.) Any deposits with or loans to a society under this Act, made before the commencement of this Act in accordance with its certified rules, are hereby declared to be valid and binding on the society, but no further deposits or loans shall be received by such society, except within the limits provided by this section :
- (5.) Every deposit book or acknowledgment or security of any kind given for a deposit or loan by a society shall have printed or written therein or thereon the whole of the fourteenth and fifteenth sections of the present Act (a).

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(a) This provision is new.

16. *Matters to be set forth in the rules.*—The rules of every society hereafter established (*b*) under this Act shall set forth,—

1. The name of the society, and chief office or place of meeting for the business of the society :
2. The manner in which the stock or funds of the society are to be raised, the terms upon which paid-up shares (if any) are to be issued and repaid, and whether preferential shares are to be issued; and, if so, within what limits, if any ; and whether the society intends to avail itself of the borrowing powers contained in this Act, and, if so, within what limits, not exceeding the limits prescribed by this Act :
3. The purposes to which the funds of the society are to be applied, and the manner in which they are to be invested :
4. The terms upon which shares may be withdrawn, and upon which mortgages may be redeemed :
5. The manner of altering and rescinding the rules of the society, and of making additional rules :
6. The manner of appointing, remunerating, and removing the board of directors or committee of management, auditors, and other officers :
7. The manner of calling general and special meetings of the members :
8. Provision for an annual or more frequent audit of the accounts, and inspection by the auditors of the mortgages and other securities belonging to the society :
9. Whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the court, or to the registrar, or to arbitration :

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(*b*) By regulation, the like matters are required to be set forth in any complete amendment of the rules of a society previously established.

10. Provision for the device, custody, and use of the seal of the society, which shall in all cases bear the registered name thereof :
11. Provision for the custody of the mortgage deeds and other securities belonging to the society :
12. The powers and duties of the board of directors or committee of management and other officers :
13. The fines and forfeitures to be imposed on members of the society :
14. The manner in which the society, whether terminating or permanent, shall be terminated or dissolved (a).

17. *Rules to be made.—Registration of rules.*—The persons intending to establish a society under this Act shall transmit to the registrar two copies of the rules agreed upon by them for the government of the society, signed by three of such persons and by the intended secretary or other officer ; and the registrar, if he find that the rules contain all the provisions set forth in section sixteen of this Act, and that they are in conformity with this Act, shall return one copy of the rules to the secretary or other officer of the society, with a certificate of incorporation, and shall retain and register the other copy ; provided that no society shall be registered under this Act in a name identical with that in which a subsisting society is already registered, or so nearly resembling the same as to be calculated to deceive, unless such subsisting society is in course of being terminated or dissolved, and consents to such registration. The society shall supply to any person requiring the same a complete printed copy of the rules, with a copy of the certificate of incorporation appended thereto, and shall be entitled to charge for every such printed copy of rules a sum not exceeding 1s. (b).

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(a) This provision is new.

(b) This section varies the enactments of 10 Geo. 4, c. 56, and 4 & 5 Will. 4, c. 40, by directing that rules shall be transmitted



18. *Alteration of rules.*—Any society under this Act, certified previously to the passing of this Act, may alter or rescind any rule or make any additional rule by the vote of three-fourths of the members present at a special meeting called for the purpose, of which meeting notice, specifying the proposed alteration, rescission, or addition shall be given to the members in the manner provided by the rules of the society, or in the absence of such rules, by letters sent through the post seven days previous to such meeting; and any society hereafter established may alter or rescind any rule, or make an additional rule, in the manner its rules direct: and every society under this Act altering or rescinding any rule, or making an additional rule, shall forward two copies of every resolution for rescission of a rule, and of every alteration of or addition to its rules, signed by three members and the secretary, and a statutory declaration of an officer of the society, that the provisions of this section have been complied with, to the registrar, who, if he finds that such alteration, addition, or rescission is in conformity with this Act, shall return one of the copies to the secretary or other officer of the society with a certificate of registration, and retain and register the other copy (c).

19. *Rules may be made to provide forms of conveyance, &c.*—Any society under this Act, in a schedule to its rules, may describe the forms of conveyance, mortgage, transfer, agreement, bond, security for deposit or

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to the registrar, and the transcripts kept by him; and that the certificate of conformity with law shall no longer be required. The provisions against identity of name, and for furnishing copies of rules, are new; but they are contained in the Acts relating to Industrial and Provident Societies, Trade Unions, and Friendly Societies. As to name, see regulation, *post*.

(c) This section varies 10 Geo. 4, c. 56, s. 9, by omitting the provision for requisition and reading notice at two usual meetings. As to change of chief office without an alteration of rule, see sect. 2 of Act of 1877, p. 55, *post*.

loan, or other instrument necessary for carrying its purposes into execution (a).

20. *Evidence of registration.*—Any certificate of incorporation or of registration, or other document relating to a society under this Act, purporting to be signed by the registrar, shall, in the absence of any evidence to the contrary, be received by the court, and by all courts of law and equity and elsewhere, without proof of the signature; and a printed copy of the rules of a society, certified by the secretary or other officer of the society to be a true copy of its registered rules, shall, in the absence of any evidence to the contrary, be received as evidence of the rules (b).

21. *Rules to be binding on members and others.*—The rules of a society under this Act shall be binding on the several members and officers of the society, and on all persons claiming on account of a member, or under the rules, all of whom shall be deemed and taken to have full notice thereof (c).

22. *Change of name.*—A society under this Act may change its name by resolution of three-fourths of the members present at a meeting called for the purpose, provided that the new name is not identical with that

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(a) This section is the same as 6 & 7 Will. 4, c. 32, s. 3, with the addition of the words "security for deposit or loan." The forms of statutory mortgage, &c., provided by the Conveyancing and Law of Property Act, 1881, (44 & 45 Vict. c. 41), do not appear to be easily applicable to the case of a Building Society mortgage; and it seems a pity that the framers of that Act should have overlooked a case which applies to such a multitude of transactions and in which simplification is so much to be desired.

(b) This section is new. For England and Wales, documents are authenticated by the seal of the central office, not the signature of a registrar. See 38 & 39 Vict. c. 60, s. 39, and regulation 25, *post*.

(c) This section is new.

of any society previously registered and still subsisting, or so nearly resembling the same as to be calculated to deceive, unless such subsisting society is in course of being terminated or dissolved, and consents to such registration. Notice of the change of name shall be sent to the registrar and registered by him, and he shall give a certificate of registration. Such change of name shall not affect any right or obligation of the society, or of any member thereof, or other person concerned (c).

23. *Officers to give security.*—Every officer of a society under this Act having the receipt or charge of any money belonging to the society shall, before taking upon himself the execution of his office, become bound with one sufficient security at the least, in a bond according to a form set forth in the schedule to this Act, or give the security of a guarantee society, or such other security as the society direct, in such sum as the society require, conditioned for rendering a just and true account of all moneys received and paid by him on account of the society, and for payment of all sums of money due from him to the society, at such times as its rules appoint, or as the society require him to do so (d).

24. *Officers to account.*—Every such officer, his executors or administrators, shall, upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the board of directors or committee of management of the society, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all the moneys remaining in his hands, and deliver all securities and effects, books, papers, and property of the society in his hands or

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(d) This section is similar to 10 Geo. 4, c. 56, s. 11; 38 & 39 Vict. c. 60, s. 20 (1).

custody, to such person as the society appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys, or to deliver such securities and effects, books, papers, and property, in manner aforesaid, the society may sue upon the bond, or may apply to the court, who may proceed thereupon in a summary way, and make such order thereon as to the court in its discretion shall seem just, which order shall be final and conclusive (a).

25. *Investment of surplus funds.*—Any society under this Act may from time to time, as the rules permit, invest any portion of the funds of the society, not immediately required for its purposes, upon real or leasehold securities, or in the public funds, or in or upon any parliamentary stock or securities, or in or upon any stock or securities payment of the interest on which is guaranteed by authority of parliament, or in the case of terminating societies, with other societies under this Act; and for the purpose of investments in the public funds or upon security of copyhold or customary estate, the society, or the board of directors or committee of management thereof, may from time to time appoint and remove trustees (b).

26. *When trustees are absent, &c., registrars may order stock to be transferred.*—When any person, in whose name any stock transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, as a trustee for any society under this Act, is absent from England or Ireland respectively, or becomes bankrupt, or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement, or for composi-

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(a) A similar provision is made for Friendly Societies by 38 & 39 Vict. c. 60, s. 20 (2).

(b) This section gives much larger scope for investment than that permitted by 10 Geo. 4, c. 56, s. 13.

tion with his creditors, or becomes a lunatic, or is dead, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary or other officer of the society and three members of the board of directors or committee of management thereof, and on proof satisfactory to him, may direct the transfer of the stock into the name of any other person or persons as trustee or trustees for the society; and such transfer shall be made by the surviving or continuing trustee or trustees, and if there be no such trustee, or if such trustee or trustees shall refuse or be unable to make such transfer, and the registrar shall so direct, then by the accountant-general or deputy or assistant accountant-general of the Bank of England or Bank of Ireland, as the case may be; and the governors and companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this section against any claim or demand of any person injuriously affected thereby (c).

27. *Property of the society vested without conveyance.*—All rights of action and other rights, and all estates and interests in real and personal estate whatsoever, [now] (d) belonging to or held in trust for any society certified under the said repealed Act, shall, on the incorporation of the society under this Act, vest in the society without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments, the title to which cannot be transferred without admittance (e).

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(c) This section is new with reference to Building Societies, but is based upon 18 & 19 Vict. c. 63, s. 36.

(d) This section is to be read without the word "now." See 40 & 41 Vict. c. 63, s. 3 and s. 4, p. 56, *post*.

(e) This section is new. Its operation is extended to the case

28. *As to copyholds.*—Where any society under this Act is entitled in equity to any hereditaments of copyhold or customary tenure by way of mortgage, the lord of the manor of which the same are held shall from time to time, if required by the society, admit such persons, not more than three, as the society appoints, to be trustees on its behalf as tenants in respect of such hereditaments, on payment of the usual fines, fees, and other dues payable on the admission of a single tenant, or may admit the society as tenant in respect of the same, on payment of such special fine, or compensation in lieu of fine, and fees as may be agreed upon (a).

29. *Payment of sums not exceeding 50*l.* when members or depositors die intestate.*—If any member of or depositor with a society under this Act having in the funds thereof a sum of money not exceeding fifty pounds shall die intestate, then the amount due may be paid to the person who shall appear to the directors or committee of management of the society to be entitled under the statute of distributions to receive the same, without taking out letters of administration, upon the society receiving satisfactory evidence of death and a statutory declaration that the member or depositor died intestate, and that the person so claiming is entitled as aforesaid: provided that whenever the society after the decease of any member or depositor has paid any such sum of money to the person who at the time appeared to be entitled to the effects of the deceased under the belief that he had died intestate the payment shall be valid and effectual with respect to any demand from any other person as

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of societies uniting, or of a society transferring its engagements to another by s. 5 of the Act of 1877.

(a) This section is new; corresponding provisions in that behalf are made by the Friendly Societies Act, 1875, and the Industrial and Provident Societies Act, 1876.

next of kin or as the lawful representative of such deceased member or depositor against the funds of the society, but nevertheless such next of kin or representative shall have his lawful remedy for the amount of such payment as aforesaid against the person who has received the same (b).

30. *Provision for the case of a member dying intestate leaving an infant heir.*—Whenever a member of a society under this Act, having executed a mortgage to the society, shall die intestate, leaving an infant heir

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(b) This section increases the limit for payment from twenty pounds to fifty pounds, and brings it into conformity with those fixed for friendly societies, savings' banks, industrial and provident societies, &c. It is important to note, however, that for small estates the trouble and expense of obtaining probate or letters of administration has of late years been greatly diminished. Thus, by 27 & 28 Vict. c. 56, ss. 4, 5, no stamp duty is chargeable on any probate or letters of administration, with or without a will annexed, granted in England or Ireland, or inventory to be exhibited and recorded in any commissary court in Scotland, of the estate and effects of any person dying after the 25th July, 1864, in any case where the whole estate and effects of the deceased person (exclusive of what he possessed or was entitled to as trustee merely), shall be sworn not to exceed, and shall not actually exceed in value the sum of 100*l*. By 36 & 37 Vict. c. 52, administration to the estate of an intestate not exceeding 100*l*., may be obtained by his widow or children through the county court for a small fee in England or Ireland, and by 38 & 39 Vict. c. 27, the benefits of this Act are extended to the children of a widow dying intestate. By 38 & 39 Vict. c. 41, (the Intestate Widow and Children (Scotland) Act, 1875,) confirmation in Scotland for an estate not exceeding 150*l*., may be obtained from the commissary clerk for a small fee. See also 39 & 40 Vict. cc. 24, 70, (Small Testate Estates, Scotland). By 44 & 45 Vict. c. 12, (the Customs and Inland Revenue Act, 1881) ss. 33, 36, estates exceeding 100*l*. and not exceeding 300*l*., are relieved from legacy duty on payment of a fixed sum of 30*s*., and probate or letters of administration for estates not exceeding 300*l*., may be obtained through an officer of the court or of inland revenue on payment of 15*s*. for fees of court and expenses. For estates of any amount, probate or letters of administration may be obtained by personal application at Somerset House or at the office of a district registrar of the Court of Probate.

or infant co-heiress, it shall be lawful for the said society, after selling the premises so mortgaged to them, to pay to the administrator or administratrix of the deceased member any money, to the amount of one hundred and fifty pounds, which shall remain in the hands of the said society after paying the amount due to the society and the costs and expenses of the sale, without being required to pay the same into the post-office savings' bank, as provided by the Trustees Relief Act, and the Acts amending or extending the same. The said sum of one hundred and fifty pounds to be considered as personal estate, and liable to duty accordingly (a).

31. *Punishment of fraud in withholding money, &c.*—If any person whosoever, by false representation or imposition, obtains possession of any moneys, securities, books, papers, or other effects of a society under this Act, or, having the same in his possession, withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society and authorised by this Act, he shall be liable on summary conviction to a penalty not exceeding twenty pounds, with costs not exceeding twenty shillings, and to be ordered to deliver up to the society all such moneys, securities, books, papers, or other effects to the society, and to repay the amount of money applied improperly, and in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, to be imprisoned, with or without hard labour, for any time not exceeding three months; but nothing herein contained shall prevent any such person from being proceeded against by way of indictment if a conviction has not been previously obtained against him for the same offence under the provisions of this Act (b).

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(a) This section is new.

(b) This section is founded on 10 Geo. 4, c. 56, s. 25, with the amendments introduced by 18 & 19 Vict. c. 63, s. 24. As to



82. *Proceedings necessary for the termination or dissolution of a society.*—A society under this Act may terminate or be dissolved—

1. Upon the happening of any event declared by its rules to be the termination of the society.
2. By dissolution in manner prescribed by its rules.
3. By dissolution with the consent of three-fourths of the members, holding not less than two-thirds of the number of shares in the society, testified by their signatures to the instrument of dissolution. The instrument of dissolution shall set forth—
  - (a). the liabilities and assets of the society in detail;
  - (b). the number of members, and the amount standing to their credit in the books of the society;
  - (c). the claims of depositors and other creditors, and the provision to be made for their payment;
  - (d). the intended appropriation or division of the funds and property of the society;
  - (e). the names of one or more persons to be appointed trustees for the special purpose, and their remuneration.

Alterations in the instrument of dissolution may be made with the like consent, testified in the same manner. The instrument of dissolution and all alterations therein shall be registered in the manner provided for the registration of rules, and shall be binding upon all the members of the society.

4. By winding-up, either voluntarily under the supervision of the court or by the court, if the court shall so order, on the petition of any member, authorized by three-fourths of the members present at a general meeting of the society specially called for the purpose to present the same on behalf of the

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procedure, see the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

society, or on the petition of any judgment creditor for not less than fifty pounds, but not otherwise. General orders for regulating the proceedings of the court under this section may be from time to time made by the authority for the time being empowered to make general orders for the court (a).

Notice of the commencement and termination of every dissolution or winding-up shall be sent to the registrar, and registered by him (b).

88. *Societies may unite with others, or one society may transfer its engagements to another.*—Two or more societies under this Act may unite and become one society, with or without any dissolution or division of the funds of such societies or either of them, or a society under this Act may transfer its engagements to any other such society, upon such terms as shall be agreed upon by three-fourths of the members (holding not less than two-thirds of the whole number of shares) of each of such societies present at general meetings respectively convened for the purpose; but no such transfer shall prejudice any right of any creditor of either society. Notice of every such union or transfer shall be sent to the registrar, and registered by him (c).

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(a) The General Orders to be adopted are those to the Companies Acts, 1862, 1867. [*Andrews v. Swansea Cambrian Building Society.*]

(b) This section is new, but its provisions have since been adopted in the Friendly Societies Act, 1875, and the Industrial and Provident Societies Act, 1876. The desire of the legislature to discourage compulsory winding up by the court is evident from the provision (inserted by the select committee of the House of Commons) that the petitioning creditor must have taken out judgment. This practically narrows the right of creditors to petition to cases where the insolvency of the society is such that the judgment cannot otherwise be satisfied. As to proceedings in Scotland under this section, see Act of Sederunt, *post*.

(c) This provision is new, but is based upon 18 & 19 Vict. c. 63, s. 14, with important amendments. As to the effect of registry of union or transfer, see 40 & 41 Vict. c. 63, s. 5, p. 56, *post*, in which the language of this section is somewhat varied.

34. *Determination of disputes by arbitration.*—Where the rules of a society under this Act direct disputes to be referred to arbitration, arbitrators shall be named and elected in the manner such rules provide, or, if there be no such provision, at the first general meeting of the society, none of the said arbitrators being beneficially interested, directly or indirectly, in its funds; of whom a certain number, not less than three, shall be chosen by ballot in each such case of dispute, the number of the said arbitrators and mode of ballot being determined by the rules of the society; the names of such arbitrators shall be duly entered in the minute book of the society, and, in case of the death or refusal or neglect of any of the said arbitrators to act, the society, at a general meeting, shall name and elect an arbitrator to act in the place of the arbitrator dying, or refusing or neglecting to act; and whatever award shall be made by the arbitrators or the major part of them, according to the true purport and meaning of the rules of the society, shall determine the dispute; and should either of the parties to the dispute refuse or neglect to comply with or conform to such award within a time to be limited therein, the court, upon good and sufficient proof being adduced of such award having been made, and of the refusal of the party to comply therewith, shall enforce compliance with the same upon the petition of any person concerned. Where the parties to any dispute arising in a society under this Act agree to refer the dispute to the registrar, or where the rules of the society direct disputes to be referred to the registrar, the award of the registrar shall have the same effect as that of arbitrators (*d*).

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(*d*) This section is based upon 10 Geo. 4, c. 56, s. 27. The provision as to the settlement of disputes by the registrar is new. The following are among the cases already decided by the registrar:—(September, 1877).—A minor was declared entitled to an appropriation. Held that her guardian might sell it for her benefit. [*Cork v. Chatham, &c. Starr Bowkett Building Society.*]

35. *Determination of disputes by court.*—The court may hear and determine a dispute in the following cases :

1. If it shall appear to the court, upon the petition of any person concerned, that application has been made by either party to the dispute to the other party, for the purpose of having the dispute settled by arbitration under the rules of the society, and that such application has not within forty days been complied with, or that the arbitrators have refused or for a period of twenty-one days have neglected to make any award.
2. Where the rules of the society direct disputes to be referred to the court or to justices (a).

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(March, 1879).—A member who had given notice to withdraw was held bound by a rule subsequently registered, having been present at the meeting at which it was adopted and acted as a member at that and subsequent meetings, and having received payments of dividend and interest under it. [*Griffith v. Planet Building Society.*] (December, 1879).—A member who had paid up arrears by a cheque was held entitled to the benefit of an appropriation on a share of his which was drawn at the ballot the day after the payment, although the cheque was afterwards dishonoured, the society having accepted cash from him in lieu of the cheque but nevertheless retained it. [*Valeriani v. Pall Mall Mutual Building Society.*] (November, 1880).—A member who had given notice to withdraw was held entitled to do so, provided there were sufficient funds for the purpose, although he had been a director and in that capacity had been party to an agreement with the solicitors that the directors would hold them harmless to the extent of the directors' shares in the society. [*Amey v. Cornhill Building Society.*] (January, 1881).—A member removed by resolution of the society under a rule authorising such removal, subject to tender of the value of his shares, was held to be no longer a member. [*Creedy v. Bentinck Building Society.*] (March, 1881).—In a society granting advances without interest, infant members were held entitled to give a discharge on the money paid on their shares. [*Swears v. Mayfair Building Society.*]

(a) This section is new, but is based upon 18 & 19 Vict. c. 63, s. 41.

36. *Determination to be final.*—Every determination by arbitrators or by the court or by the registrar under this Act of a dispute shall be binding and conclusive on all parties, and shall be final to all intents and purposes, and shall not be subject to appeal, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity; provided always, that the arbitrators, or the registrar, or the court, as the case may be, may, at the request of either party, state a case for the opinion of the Supreme Court of Judicature on any question of law, and shall have power to grant to either party to the dispute such discovery, as to documents and otherwise, as might now be granted by any court of law or equity, such discovery to be made on behalf of the society by such officer of the society as the arbitrators, registrar, or court may determine (b).

37. *Buildings for the purpose may be purchased or leased.*—A society under this Act may purchase, build, hire, or take upon lease any building for conducting its business, and may adapt and furnish the same, and may purchase or hold upon lease any land for the purpose only of erecting thereon a building for conducting the business of the society, and may sell, exchange, or let such building, or any part thereof (c).

38. *Minors may be elected members.*—Any person under the age of twenty-one years may be admitted as a member of any society under this Act, the rules of

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(b) The latter part of this section is new. See regs. 20—23, *post*.

(c) This provision is new; but is based upon 18 & 19 Vict. c. 63, s. 16, though much simplified. Friendly Societies and Industrial and Provident Societies have power to hold land as an investment, not merely buildings for conducting the business of the society.

which do not prohibit such admission, and may give all necessary acquittances ; but during his nonage he shall not be competent to vote or hold any office in the society (a).

39. *Shares may be held by two or more persons.*—Two or more persons may jointly hold a share or shares in any society under this Act ; and all shares held jointly by any two or more persons in any society subsisting at the time appointed for the commencement of this Act, the rules whereof shall not prohibit such joint holding, shall be deemed to be lawfully so held (b).

40. *Societies shall make annual audits and statements of the funds to the members.*—The secretary or other officer of every society under this Act shall, once in every year at least, prepare an account of all the receipts and expenditure of the society since the preceding statement, and a general statement of its funds and effects, liabilities and assets, showing the amounts due to the holders of the various classes of shares respectively, to depositors and creditors for loans, and also the balance due or outstanding on their mortgage securities (not including prospective interest), and the amount invested in the funds or other securities ; and every such account and statement shall be attested by the auditors, to whom the mortgage deeds and other securities belonging to the society shall be produced, and such account and statement shall be countersigned by the secretary or other officer ; and every member, depositor, and creditor for loans shall be entitled to receive from the society a copy of such

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(a) This provision corresponds with that of 10 Geo. 4, c. 56, s. 32, the application of which to benefit building societies has been doubted.

(b) This provision is new, and is introduced to meet a doubt raised as to the joint holding of shares.

account and statement, and a copy thereof shall be sent to the registrar within fourteen days after the annual or other general meeting at which it is presented, and another copy thereof shall be suspended in a conspicuous place in every office of the society under this Act (c).

41. *Exemption from stamp duties.*—No rules of any society under this Act, nor any copy thereof, nor any power, warrant, or letter of attorney granted or to be granted by any person as trustee for the society for the transfer of any share in the public funds standing in his name, nor any receipts given for any dividend in any public stock or fund, or interest of exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of the society, nor for any money received by any member, his executors or administrators, assigns, or attorneys, from the funds of the society, nor any transfer of any share, nor any bond or other security to be given to or on account of the society, or by any officer thereof, nor any order on any officer for payment of money to any member, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorised to be given, issued, signed, made, or produced in pursuance of this Act, or of the rules of the society, shall be subject or liable to or charged with any stamp duty or duties whatsoever, provided that the exemption shall not extend to any mortgage (d).

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(c) This provision is new. An abstract of the statements furnished to the registrar has been printed each year by order of the House of Commons; the one last issued is parliamentary paper 245, session 1881.

(d) This section corresponds with 10 Geo. 4, c. 36, s. 37; 6 & 7 Will. 4, c. 32, s. 8; but the proviso that the exemption shall not extend to any mortgage is new.

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42. *Receipt endorsed on mortgage to be sufficient discharge without re-conveyance.*—When all moneys intended to be secured by any mortgage or further charge given to a society under this Act in England or Ireland have been fully paid or discharged, the society may endorse upon or annex to such mortgage or further charge a re-conveyance of the mortgaged property to the then owner of the equity of redemption, or to such persons and to such uses as he may direct, or a receipt under the seal of the society, countersigned by the secretary or manager, in the form specified in the schedule to this Act, and such receipt shall vacate the mortgage or further charge or debt, and vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption, without any re-conveyance or re-surrender whatever; and if the said mortgage or further charge has been registered under any Act for the registration or record of deeds or titles, the registrar under such Act, or his deputy or assistant registrar, or the recording officer, as the case may be, or, in the case of copyholds or lands of customary tenure, if the mortgage or further charge has been entered on any court rolls, the steward of the manor or his deputy respectively, shall, on production of such receipt, verified by oath of any person, make an entry opposite the entry of the charge or mortgage, to the effect that such charge or mortgage is satisfied, and shall grant a certificate, either on the said mortgage or charge or separately, to the like effect, which certificate shall be received in evidence in all courts and proceedings without any further proof, and which entry shall have the effect of clearing the register or record of such mortgage; and the registrar or recording officer shall be entitled to a fee of two shillings and sixpence for making the said entry and granting the said certificate, and such fee shall in Ireland be paid by stamps, and applied as the other fees of the Registry



of Deeds Office, and Record of Title Office are now by law directed to be paid and applied (a).

43. *Penalties.*—If any society hereafter formed under this Act, or any persons representing themselves to be a society under this Act, commence business without first obtaining a certificate of incorporation under this Act, or if any society under this Act makes default in forwarding to the registrar any returns or information by this Act required, or in inserting in any deposit book or acknowledgment or security for loan the matters required by section fifteen of this Act to be inserted therein, or makes a return wilfully false in any respect, the person or persons by whom business shall have been so commenced, or by whom such default shall have been made, or who shall have made such wilfully false return, shall be liable for every day business is so carried on, or for every such default or false return, upon summary conviction before justices at the complaint of the registrar, to a penalty not exceeding five pounds. If any society under this Act receives loans or deposits in excess of the limits prescribed by this Act, the directors or committee of management of such society receiving such loans or deposits on its behalf shall be personally liable for the amount so received in excess (b).

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(a) This section is based upon 6 & 7 Will. 4, c. 32, s. 5, with the amendments introduced for Industrial and Provident Land Societies by 34 & 35 Vict. c. 80, which were adopted from the Building Societies Bill of that year (1871). The benefit of this section has since been extended to Friendly Societies by 38 & 39 Vict. c. 60, s. 7. It is really not so much a privilege to the society as to the mortgagor; and it is difficult to find any substantial reason why all mortgages should not be made dischargeable by receipt endorsed. The Conveyancing and Law of Property Act, 1881, (44 & 45 Vict. c. 41), however, instead of adopting this course, provides a form of deed of statutory reconveyance, and that is only applicable to a statutory mortgage.

(b) This provision is new. Under it the following conviction has taken place:—12th East Central Building Society, for

44. *Regulations.*—One of Her Majesty's principal secretaries of state may from time to time make regulations respecting the fees, if any, to be paid for the transmission, registration, and inspection of documents under this Act, and generally for carrying this Act into effect. The registrar shall give his certificates in the forms contained in the schedule to this Act respectively (a).

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### SCHEDULE.

#### FORM OF BOND.(b).

Know all men by these presents, that we *A.B.* of        one of the officers of the        Building Society, established at in the county of       , and *C.D.* of        (as surety on behalf of the said *A.B.*), are jointly and severally held and firmly bound to the said society, in the sum of       , to be paid to the said society, for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated the day of        in the year of our Lord       .

Whereas the above-bounden *A.B.* hath been duly appointed to the office of        of the        Building Society, established as aforesaid, and he, together with the above-bounden *C.D.* as his surety, have entered into the above-written bond, subject to the condition hereinafter contained:

Now, therefore, the condition of the above-written bond is such, that if the said *A.B.* shall and do render a just and true account of all moneys received and paid by him, and shall and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers, and property of or belonging to the said society in his hands or custody, to such person or persons as the said society shall appoint, according to the rules of the said society, together with

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default in forwarding annual statement, 5*l.* and costs, 27th July, 1881.

(a) This provision is new. Formerly a fee of one guinea had been payable to the barrister for every certificate to rules or alteration of rules within three years under 4 & 5 Will. 4, c. 40.

(b) This form corresponds with that provided by the schedule to 10 Geo. 4, c. 56.

the proper or legal receipts or vouchers for such payments, then the above-written bond shall be void and of no effect, otherwise shall be and remain in full force and virtue.

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FORM OF RECEIPT TO BE ENDORSED ON MORTGAGE OR  
FURTHER CHARGE.

The Building Society hereby acknowledge to have received all moneys intended to be secured by the within [or above] written deed.

In witness whereof the seal of the society is hereto affixed  
this day of by order of the board of directors  
[or committee of management] in presence of  
, Secretary [or Manager]. (L.S.)

[Other witnesses, if any required by the rules of the society.]

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FORMS OF CERTIFICATE TO BE GIVEN UNDER THIS ACT.

[Other forms are substituted for these by the schedule to the  
Building Societies Act, 1877.]

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THE BUILDING SOCIETIES ACT, 1875.

38 VICT. CAP. 9.

*An Act to repeal section 8 of the Building Societies Act, 1874, and make other provisions in lieu thereof.*

[22nd April, 1875.]

WHEREAS by the Building Societies Act, 1874, the Act of the session of the sixth and seventh years of the reign of His late Majesty King William the Fourth, chapter thirty-two, intituled "An Act for the regulation of Benefit Building Societies," was repealed, subject as in the recited Act mentioned, and by section eight of the said Building Societies Act, 1874, it was enacted as follows:—

"Every society, the rules of which have been certified under the said repealed Act, shall be deemed to

be a society under this Act, and may obtain a certificate of incorporation under this Act, and thereupon its rules shall, so far as the same are not contrary to any express provisions of this Act, continue in force until altered or rescinded as hereinafter mentioned : ”

And whereas the words in the said section, whereby existing societies not having a certificate of incorporation are deemed to be societies under the Building Societies Act, 1874, were inserted through inadvertence :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :—

1. *Repeal of sect. 8 of 37 & 38 Vict. c. 42.*—Section eight of the Building Societies Act, 1874, is hereby repealed as from the date of the commencement of such last-mentioned Act : provided that such repeal shall not affect any certificate of incorporation given, or any other thing heretofore done or suffered in pursuance of such section before the date of the passing of this Act.

2. *Substitution of clause for sect. 8 of 37 & 38 Vict. c. 42.*—From and after the passing of this Act every society the rules of which have been certified under the said Act of the session of the sixth and seventh years of the reign of His late Majesty King William the Fourth, chapter thirty-two, intituled “An Act for the regulation of Benefit Building Societies,” may obtain a certificate of incorporation under the Building Societies Act, 1874, and thereupon shall be deemed to be a society under that Act ; and its rules shall, so far as the same are not contrary to any express provisions of that Act, continue in force until altered or rescinded as in that Act mentioned.

3. *Short title.*—This Act may be cited as the Building Societies Act, 1875.

## THE BUILDING SOCIETIES ACT, 1877.

40 &amp; 41 VICT. CAP. 63.

*An Act to amend the Building Societies Act, 1874.*  
[14th August, 1877.]

WHEREAS it is expedient to amend the laws relating to building societies: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:—

1. *Short title, &c.*—37 & 38 Vict. c. 42—38 & 39 Vict. c. 9.—This Act shall be construed as one with “The Building Societies Act, 1874” (herein termed “the principal Act”), and “The Building Societies Act, 1875,” and may be cited as “The Building Societies Act, 1877,” or, together with the said Acts, as “The Building Societies Acts.”

2. *Societies may change their chief offices*—*Notice of such change to be sent to the registrar.*—Any society under the principal Act may change its chief office in the manner its rules direct, or, if there be no such direction, then at a general meeting specially called for the purpose, in the manner set forth in the rules of the society; and no alteration of rule shall be necessary upon such change, nor shall the provisions of section eighteen of the principal Act apply to such change. Notice of every such change shall be given by the secretary of the society to the registrar within seven days after such change, and shall be registered by him, and he shall give a certificate of such registration.

3. *Amendment of 37 & 38 Vict. c. 42, s. 27.*—Section twenty-seven of the principal Act shall be read as if the word “now” were omitted therefrom.

4. *Rights held in trust to vest in societies.*—All rights of action and other rights and interests in real and personal estate whatsoever held in trust for any society heretofore incorporated under the principal Act shall, on the passing of this Act, vest in the society without any conveyance or assignment whatsoever, except in the case of stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments the title to which cannot be transferred without admittance.

5. *Registration of union of societies or of transfer of engagements to operate as effectual conveyance of funds and property of uniting societies to the united society and to society to which engagements are transferred.*—The registration by the registrar of the notice of the union of any societies, or of the transfer of the engagements of any society to another society, in terms of and subject to the provisions of section thirty-three of the principal Act, shall operate as an effectual conveyance, transfer, and assignment, as at the date of the said registration, of the funds, property, and assets of the societies so uniting to the united society, or of the society transferring its engagements to the society to which such engagements may be transferred, as may be set forth in the instrument of union or transfer of engagements, without any conveyance, transfer, or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments the title to which cannot be transferred without admittance: Provided always, that such union or transfer of engagements shall not affect

the rights of any creditor of either or any society uniting or transferring its engagements (a).

6. *Forms in schedule to be used.*—The forms in the schedule to this Act shall henceforth be used under the Building Societies Acts.

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## SCHEDULE.

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### *Certificate of Incorporation.*

The registrar of building societies in [England, Scotland, or Ireland] hereby certifies that the Building Society, established at , in the county of , is incorporated under "The Building Societies Act, 1874."

This       day of       , 18 .

[Seal of Central Office, or signature of  
Assistant Registrar of Friendly Societies.]

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### *Certificate of Registration of Alteration of Rules*

The registrar of building societies in [England, Scotland, or Ireland] hereby certifies that the foregoing alterations of [or addition to] the rules of the Building Society, established at , in the county of , are registered under "The Building Societies Act, 1874."

This       day of       , 18 .

[Seal of Central Office, or signature of  
Assistant Registrar of Friendly Societies.]

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(a) A difference between this proviso and the similar saving clause in sect. 33 of the principal Act is to be noted. In the Act of 1877 it appears to have been thought unnecessary to protect the rights of creditors of the Transferee Society.

*Certificate of Registration of Change of Name.*

The registrar of building societies in [England, Scotland, or Ireland] hereby certifies that the registered name of the Building Society, established at , in the county of , is changed from the date hereof to the name following:

This       day of       , 18 .

[Seal of Central Office, or signature of  
Assistant Registrar of Friendly Societies.]

*Certificate of Alteration of Chief Office.*

The registrar of building societies in [England, Scotland, or Ireland] hereby certifies that the registered chief office of the Building Society, established at , in the county of , is changed from the date hereof to the office or place following

This       day of       , 18 .

[Seal of Central Office, or signature of  
Assistant Registrar of Friendly Societies.]

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## THE BUILDING SOCIETIES ACT, 1884.

47 &amp; 48 VICT. CAP. 41.

*An Act to amend the Building Societies Act, 1884.*

[7th August, 1884.]

WHEREAS it is expedient to amend the laws relating to building societies: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

1. *Construction and short title.*—This Act shall be construed as one with the Building Societies Act, 1874, and the Building Societies Act, 1875, and the Building Societies Act, 1877, and may be cited as the Building Societies Act, 1884, or, together with the said Acts, as the Building Societies Acts.

2. *Definition of word "disputes."*—The word "disputes" in the Building Societies Acts, or in the rules of any society thereunder, shall be deemed to refer only to disputes between the society and a member, or any representative of a member in his capacity of a member of the society, unless by the rules for the time being it shall be otherwise expressly provided; and, in the absence of such express provision, shall not apply to any dispute between any such society and any member thereof, or other person whatever, as to the construction or effect of any mortgage deed, or any contract contained in any document, other than the rules of the society, and shall not prevent any society, or any member thereof, or any person claiming through or under him, from obtaining in the ordinary course of law

any remedy in respect of any such mortgage or other contract to which he or the society would otherwise be by law entitled: Provided always, that nothing in this Act shall apply to any dispute pending at any time before the passing of this Act between any such society and any member thereof, or other person, which before the passing of this Act shall have been actually referred, or agreed to be referred, to arbitration, or as to which the jurisdiction of any court of law shall have been adjudged to be excluded by a decision of any court of competent jurisdiction in an action or suit between the society and any member thereof or other person.

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## PART II.

### SOCIETIES UNDER THE ACT OF 1836 NOT INCORPORATED UNDER THE ACT OF 1874.

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THE Acts of 1874, 1875 and 1877, leave that of 1836 unrepealed as to societies which do not become incorporated, but provide that the things heretofore done by or sent to the barrister or advocate and the clerk of the peace shall be done by or sent to the registrar. No new societies, however, can be established under the Act of 1836.

6 & 7 WILL. 4, CAP. 32.

*An Act for the regulation of Benefit Building Societies.*  
[14th July, 1836.]

WHEREAS certain societies commonly called Building Societies have been established in different parts of the Kingdom principally amongst the industrious classes, for the purpose of raising by small periodical subscriptions, a fund to assist the members thereof in obtaining a small freehold or leasehold property, and it is expedient to afford encouragement and protection to such societies and the property obtained therewith: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same:

I. *Societies may be established for the purchase or erection of dwelling-houses.*—That it shall and may be lawful for any number of persons in Great Britain and Ireland to form themselves into and establish (a) societies for the purpose of raising, by the monthly or other subscriptions of the several members of such societies, shares not exceeding the value of one hundred and fifty pounds for each share, such subscriptions not to exceed in the whole twenty shillings per month for each share, a stock or fund for the purpose of enabling each member thereof to receive out of the funds of such society the amount or value of his or her share or shares therein, to erect or purchase one or more dwelling-house or dwelling-houses, or other real or leasehold estate to be secured by way of mortgage to such society until the amount or value of his or her shares shall have been fully repaid to such society with the interest thereon, and all fines or other payments incurred in respect thereof, and to and for the several members of each society from time to time to assemble together, and to make, ordain, and constitute such proper and wholesome rules and regulations for the government and guidance of the same as to the major part of the members of such society so assembled together shall seem meet, so as such rules shall not be repugnant to the express provisions of this Act and to the general laws of the realm, and to impose and inflict such reasonable fines, penalties, and forfeitures upon the several members of any such society who shall offend against any such rules, as the members may think fit, to be respectively paid to such uses for the benefit of such society as such society by such rules shall direct, and also from time to time to alter and amend such rules as occasion shall require, or annul or repeal the same, and to make new rules in lieu thereof, under such restrictions

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(a) The provisions as to the establishment of societies are not now in force.

as are in this Act contained : provided that no member shall receive or be entitled to receive from the funds of such society any interest or dividend, by way of annual or other periodical profit upon any shares in such society, until the amount or value of his or her share shall have been realized, except on the withdrawal of such member, according to the rules of such society then in force.

[Sect. II. provides that bonus, &c., shall not be deemed usurious ; but it is rendered unnecessary by the repeal of the usury laws.]

III. *Rules may be made to provide forms of conveyance, &c.*—And be it further enacted, that it shall and may be lawful to and for any such society, in and by the rules thereof, to describe the form or forms of conveyance, mortgage, transfer, agreement, bond, or other instrument which may be necessary for carrying the purposes of the said society into execution ; and which shall be specified and set forth in a schedule to be annexed to the rules of such society, and duly certified and deposited as hereinafter provided.

IV. *Provisions of Friendly Society Acts of 10 Geo. 4, c. 56, and 4 & 5 Will. 4, c. 40, extended to this Act.*—And be it further enacted, that all the provisions of a certain Act made and passed in the tenth year of the reign of His late Majesty King George the Fourth, intituled “ An Act to consolidate and amend the laws relating to Friendly Societies,” and also the provisions of a certain other Act made and passed in the fourth and fifth years of the reign of His present Majesty King William the Fourth, intituled “ An Act to amend an Act of the tenth year of His late Majesty King George the Fourth, to consolidate and amend the laws relating to Friendly Societies,” so far as the same, or any part thereof, may be applicable to the purpose of any benefit building society, and to the [framing,

certifying, enrolling, and] altering the rules thereof, shall extend and apply to such benefit building society and the rules thereof, in such and the same manner as if the provisions of the said Acts had been herein expressly re-enacted.

V. *Receipt endorsed on mortgage to be sufficient discharge without re-conveyance.*—And be it further enacted, that it shall be lawful for the trustees named in any mortgage made on behalf of such societies; or the survivor or survivors of them, or for the trustees for the time being, to endorse upon any mortgage or further charge given by any member of such society to the trustees thereof for moneys advanced by such society to any member thereof, a receipt for all moneys intended to be secured by such mortgage or further charge, which shall be sufficient to vacate the same, and vest the estate of and in the property comprised in such security, in the person or persons for the time being entitled to the equity of redemption, without it being necessary for the trustees of any such society to give any re-conveyance of the property so mortgaged, which receipt shall be specified in a schedule to be annexed to the rules of such society, duly certified [and deposited] as aforesaid.

VI. *Not to authorize investment of funds in savings' bank.*—Provided always, and be it further enacted, that nothing herein contained shall authorize any benefit building society to invest its funds, or any part thereof, in any savings' bank or with the commissioners for the reduction of the national debt.

[Other investments are authorized by 10 Geo. 4, c. 56, s. 13.]

VII. *Benefit of Act to extend to all societies established prior to June, 1836.*—And be it further enacted, that all building societies established prior to the first day of

June, one thousand eight hundred and thirty-six, (a) shall be entitled to the protection and benefits of this Act, on their present rules being duly certified [and deposited] as directed by the said recited Acts; and no such society shall be entitled to the benefit of this Act until their rules shall have been so certified [and deposited]; and that no such society shall be required to alter in any manner the rules under which they are now respectively governed.

VIII. *Exemption from stamp duties.*—And be it further enacted, that no rules of any such society, or any copy thereof, nor any transfer of any share or shares in any such society, shall be subject or liable to or charged with any stamp duty or duties whatsoever.

[Other exemptions are provided by 10 Geo. 4, c. 56, s. 37.]

IX. *Public Act.*—And be it further enacted, that this Act shall be deemed a public Act, and shall extend to Great Britain, Ireland, and Berwick-upon-Tweed, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without the same being specially shown or pleaded.

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10 GEO. 4, CAP. 56.

*An Act to consolidate and amend the laws relating to Friendly Societies.* [19th June, 1829.]

Sect. 1 repeals 33 Geo. 3, c. 54; 35 Geo. 3, c. 111; 36 Geo. 3, (I.); 43 Geo. 3, c. 111; 49 Geo. 3, c. 58; 49 Geo. 3, c. 125; and 59 Geo. 3, c. 128; and 6 Geo. 4, c. 74, in part.

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(a) No societies established prior to 1845, are believed to be now in existence.

[Sect. 2 provides that any number of persons may form themselves into a society, and raise a fund for their mutual benefit, and make rules, &c.]

III. *Societies, in their rules, to declare the purpose of their establishment, &c.*—And be it further enacted, that every such society . . . shall, in or by one or more of the rules . . . declare all and every the intents and purposes for which such society is . . . established, and shall also in and by such rules direct all and every the uses and purposes to which the money which shall from time to time be subscribed, paid, or given to or for the use or benefit of such society, or which shall arise therefrom, or in anywise shall belong to such society, shall be appropriated and applied, and in what shares and proportions and under what circumstances any member of such society, or other person, shall or may become entitled to the same or any part thereof; provided that the application thereof shall not in anywise be repugnant to the uses, intents, and purposes of such society, or any of them, so to be declared as aforesaid; and all such rules, during the continuance of the same, shall be complied with and enforced; and the moneys so subscribed, paid, or given, or so arising, to or for the use and benefit of such society, or belonging thereto, shall not be diverted or misapplied either by the treasurer, trustee, or any other officer or member of such society entrusted therewith, under such penalty or forfeiture as such society shall by any rule impose and inflict for such offence.

[The portions omitted from this section are repealed by 4 & 5 Will. 4, c. 40, s. 3.]

[Sect. 4, providing that rules of the society are to be submitted to a barrister, or other person, by whom they are to be certified, and deposited with the clerk of the peace, is repealed by 4 & 5 Will. 4, c. 40, s. 3.]



V. *Manner of proceeding in case [Registrar] shall refuse to certify.*—Provided always, and be it further enacted, that in case the [registrar] shall refuse to certify all or any of the rules so to be submitted for his perusal and examination, it shall then be lawful for any such society to submit the same to the court of quarter sessions, together with the reasons assigned by the said [registrar] in writing, for any such rejection or disapproval of any one or more such rules; and that the justices at their said quarter sessions shall and may, if they think fit, confirm and allow the same, notwithstanding any such rejection or disapproval by any such [registrar].

[The words within brackets are the alterations introduced by 37 & 38 Vict. c. 42, s. 7.]

[Sect. 6, providing that rules are not to be allowed unless the justices are satisfied with the tables, is repealed by 4 & 5 Will. 4, c. 40, s. 1.]

VII. *Society [when] entitled to the benefit of this Act.*—And be it further enacted, that no such society as aforesaid shall have the benefit of this Act unless all the rules for the management thereof shall be entered in a book to be kept by an officer of such society appointed for that purpose, and which book shall be open at all seasonable times for the inspection of the members of such society . . . but nevertheless nothing contained herein shall extend to prevent any alteration in or amendment of any such rules so entered . . . as aforesaid, or repealing or annulling the same, or any of them, in the whole or in part, or making any new rules for the management of such society in such manner as by the rules of such society shall from time to time be provided; by such new rules, or such alterations in or amendments of former rules, or any order annulling or repealing any former rules in the whole or in part, shall not be in force until the same respectively shall be

entered in such book as aforesaid, and certified when necessary, by such [registrar] as aforesaid . . .

[The portions omitted from this section are repealed by 4 & 5 Will. 4, c. 40, ss. 3, 4.]

VIII. *Rules, when entered and deposited, to be binding on members and depositors—Copy of transcript to be received in evidence.*—And be it further enacted, that all rules from time to time made and in force for the management of such society as aforesaid and duly entered in such book as aforesaid . . . shall be binding on the several members and officers of such society, and the several contributors thereto, and their representatives, all of whom shall be deemed and taken to have full notice thereof by such entry and contribution as aforesaid; and the entry of such rules in such book as aforesaid, or the transcript thereof . . . or a true copy of such transcript, examined with the original, and proved to be a true copy, shall be received as evidence of such rules respectively in all cases; and no *certiorari*, suspension, advocacy, reduction, or other legal process shall be brought or allowed to remove any such rules into any of His Majesty's courts of record; and every copy of any such transcript . . . shall be made without fee or reward, except the actual expense of making such copy.

[The portions omitted from this section are repealed by 4 & 5 Will. 4, c. 40, s. 3.]

[Further provision as to the evidence of documents is made by 38 & 39 Vict. c. 60, s. 39.]

IX. *No . . . rule to be altered but at a general meeting of the society, &c.*—And be it further enacted, that no rule . . . shall be altered, rescinded, or repealed, unless at a general meeting of the members of such society as aforesaid, convened by public notice, written or printed, signed by the secretary or president or other principal officer or clerk of such

society, in pursuance of a requisition for that purpose by seven or more of the members of such society, which said requisition and notice shall be publicly read at the two usual meetings of such society, to be held next before such general meeting for the purpose of such alteration or repeal, unless a committee of such members shall have been nominated for that purpose at a general meeting of the members of such society convened in manner aforesaid, in which case such committee shall have the like power to make such alterations or repeal, and unless such alterations or repeal shall be made with the concurrence and approbation of three-fourths of the members of such society then and there present, or by the like proportion of such committee as aforesaid, if any shall have been nominated for that purpose.

[The portion omitted from this section is repealed by 4 & 5 Will. 4, c. 40, s. 3.]

X. *Rules shall specify place of meeting and duties of officers—Societies may alter place of meeting.*—And be it further enacted, that the rules of every society formed under the authority of this Act shall specify the place or places at which it is intended such society shall hold its meetings, and shall contain provisions with respect to the powers and duties of the members at large, and of such committees or officers as may be appointed for the management of the affairs of such society: provided always, that it shall and may be lawful for any such society to alter their place or places of meeting whenever they may consider it necessary, upon giving notice thereof in writing to the [registrar], the said notice to be given within seven days before or after such removal, and signed by the secretary or other principal officer, and also by three or more of the members of the said society; and provided that the place or places at which such society intend to hold their meetings shall be situate within the county in which the rules of the said society are enrolled.

**XI. Society may appoint officers.**—*Securities to be given for offices of trust, if required—Treasurer or trustees to give bond . . .*—And be it further enacted, that every such society shall and may from time to time, at any of their usual meetings, or by their committee, if any such shall be appointed for that society, elect and appoint such person into the office of steward, president, warden, treasurer or trustee of such society, as they shall think proper, and also shall and may from time to time elect and appoint such clerks and other officers as shall be deemed necessary to carry into execution the purposes of such society, for such space of time and for such purposes as shall be fixed and established by the rules of such society, and from time to time to elect and appoint others in the room of those who shall vacate or die; and such treasurer, trustee, and all and every other officer or other person whatever who shall be appointed to any office in anywise touching or concerning the receipt, management, or expenditure of any sum of money collected for the purpose of any such society, before he, she, or they shall be admitted to take upon him, her, or them the execution of any such office or trust (if required so to do by the rules of such society to which such officer shall belong), shall become bound in a bond, according to the form prescribed in the schedule to this Act annexed, with two sufficient sureties, for the just and faithful execution of such office or trust, and for rendering a just and true account according to the rules of such society, and in all matters lawful to pay obedience to the same, in such penal sum of money as by the major part of such society at any such meeting as aforesaid shall be thought expedient, and to the satisfaction of such society . . .

[The Act goes on to provide that the bond shall be given to the clerk of the peace, but as the clerk of the peace has ceased to enrol documents for benefit building societies, it is doubtful whether that provision is still applicable to them.]

**XII. Appointment of committees.**—And be it further enacted, that every such society shall and may from time to time elect and appoint any number of the members of such society to be a committee, the number thereof to be declared in the rules of every such society, and shall and may delegate to such committee all or any of the powers given by this Act to be executed, who, being so delegated, shall continue to act as such committee, for and during such time as they shall be appointed, for such society, for general purposes, the powers of such committee being first declared in and by the rules of such society . . . and in all cases where a committee shall be appointed for any particular purpose, the powers delegated to such committee shall be reduced into writing and entered into a book by the secretary or clerk of such society, and a majority of the members of such committee shall at all times be necessary to concur in any act of such committee; and such committee shall, in all things delegated to them, act for and in the name of such society; and all acts and orders of such committee, under the powers delegated to them, shall have the like force and effect as the acts and orders of such society at any general meeting thereof could or might have had in pursuance of this Act: provided always, that the transactions of such committee shall be entered in a book belonging to such society, and shall be from time to time and at all times subject and liable to the review, allowance, or disallowance and control of such society, in such manner and form as such society shall by their general rules . . . have directed and appointed, or shall in like manner direct and appoint.

[The portions omitted from this section are repealed by 4 & 5 Will. 4, c. 40, s. 3.]

**XIII. Treasurer or trustees to lay out surplus of contributions; and to bring the proceeds to account.**—And be it further enacted, that it shall and may be lawful to and for the treasurer or trustee for the time being

of any such society, and he, she, and they is and are hereby authorized and required, from time to time, by and with the consent of such society, to be had and testified in such manner as shall be directed by the general rules of such society, to lay out or dispose of such part of all such sums of money as shall at any time be collected, given, or paid to and for the beneficial ends, intents, and purposes of such society, as the exigencies of such society shall not call for the immediate application or expenditure of, either on real or heritable securities or heritable property, to be approved of as aforesaid (such securities to be taken in the name of such treasurer or trustee for the time being), or to invest the same in the public stocks or funds . . . or government securities, or in any of the chartered banks in Scotland, or in the bank of the Commercial Banking Company of Scotland, and not otherwise, in the proper name of such treasurer or trustee; and from time to time, with such consent as aforesaid, to alter and transfer such securities and funds, and to make sale thereof respectively; and that all the dividends, interests, and proceeds which shall from time to time arise from the moneys so laid out or invested as aforesaid shall from time to time be brought to account by such treasurer or trustee, and shall be applied to and for the use of such society, according to the rules thereof.

[The portion omitted from this section is repealed by 6 & 7 Will. 4, c. 82, s. 6.]

XIV. *Treasurers, &c., to render accounts, and pay over balances, &c., and in case of neglect, application may be made to the court.*—And be it further enacted, that every person who shall have or receive any part of the moneys, effects, or funds of or belonging to any such society, or shall in any manner have been or shall be entrusted with the disposal, management, or custody thereof, or of any securities, books, papers, or property relating to the same, his or her executors, administrators, and assigns respectively, shall upon demand

made, or notice in writing given or left at the last or usual place of residence of such persons, in pursuance of any order of such society, or committee to be appointed as aforesaid, for that purpose, give in his or her account at the usual meeting of such society, or to such committee thereof as aforesaid, to be examined and allowed or disallowed by such society or committee thereof, and shall, on the like demand or notice, pay over all the moneys remaining in his or her hands, and assign and transfer or deliver all securities and effects, books, papers, and property, taken or standing in his or her name as aforesaid, or being in his or her hands or custody, to the treasurer or trustee for the time being, or to such other person as such society or committee thereof shall appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys, or to assign, transfer, or deliver such securities and effects, books, papers, and property, in manner aforesaid, it shall and may be lawful to and for every such society, in the name of the treasurer or trustee or other principal officer thereof, as the case may be, to exhibit a petition in the [High Court of Justice], who shall and may proceed thereupon in a summary way, and make such order therein, upon hearing all parties concerned, as to such court in their discretion shall seem just, which order shall be final and conclusive; and all assignments, sales, and transfers made in pursuance of such order shall be good and effectual in law to all intents and purposes whatsoever.

[The words within brackets are the alteration introduced by the Judicature Acts.]

XV. *Where trustees, &c., are out of jurisdiction of court, or it be uncertain whether they are alive, or they refuse to convey, &c., Court . . . may appoint a person to convey.*—And be it further enacted, that when and so often as any person seised or possessed of any lands, tenements, or hereditaments, or other property, or any estate or interest therein, as a trustee of any such society, shall be out of the jurisdiction of or not.

amenable to the process of the court . . . or shall be idiot, lunatic, or of unsound mind, or it shall be unknown or uncertain whether he or she be living or dead, or such person shall refuse to convey or otherwise assure such lands, tenements, hereditaments, or property, or estate or interest to the person duly nominated as trustee of such society in their stead, either alone or together with any continuing trustee, as occasion shall require, then and in every or any such case it shall be lawful for the judges of the said court . . . to appoint such person, as to such court shall seem meet, on behalf and in the name of the person seised or possessed as aforesaid, to convey, surrender, release, assign, or otherwise assure the said lands, tenements, hereditaments, or property, or estate or interest, to such trustee so duly nominated as aforesaid; and every such conveyance, release, surrender, assignment, or assurance shall be as valid and effectual to all intents and purposes as if the person being out of the jurisdiction or not amenable to the process of the said courts, or not known to be alive, or having refused, or as if the person being idiot, lunatic, or of unsound mind, had been at the time of the execution thereof of sane mind, memory, and understanding, and had by himself or herself executed the same.

XVI. *When trustees shall be absent, &c., courts may order stock to be transferred and dividends paid.*—And be it further enacted, that when and as often as it shall happen that all and every person in whose name any part of the several stocks, annuities, and funds transferable or which hereafter shall be made transferable at the Bank of England, or in the books of the governor and company of the Bank of England, is, are, or shall be standing as a trustee of any such society, shall be absent, out of the jurisdiction or not amenable to the process of the said court . . . or shall be a bankrupt . . . or lunatic, or it shall be uncertain or unknown whether such trustee is living or



dead, that then and in such case it shall and may be lawful to and for the judges of the said courts respectively to order and direct that the accountant-general, or the secretary or deputy secretary, or other proper officer for the time being of the governor and company of the Bank of England, do transfer in the book of the said company such stock, annuities, or funds standing as aforesaid, to and into the name of such person as such society may appoint, and also pay over to such person as aforesaid the dividends of such stock, annuities, or funds; and when and as often as it shall happen that one or more only, and not all or both of such trustees as aforesaid, shall be so absent, or not amenable to such process as aforesaid, or a bankrupt . . . or lunatic, or it be uncertain or unknown whether any one or more of such trustees is or are living or dead, that then, and in all and every such last mentioned case and cases, it shall and may be lawful to and for the judges of the said courts respectively to order and direct that the other and others of such trustees who shall be forthcoming and ready and qualified to act do transfer such stock, annuities, or funds to and into the name of such person as aforesaid, and also that such forthcoming trustee do also receive and pay over the dividends of such stock, annuities, or funds, as such society shall direct; and that all such transfers and payments so made shall be and are hereby declared to be valid and effectual to all intents and purposes whatsoever, any former statute, law, usage, or custom to the contrary thereof in anywise notwithstanding.

XVII. *No fee to be taken for any proceeding in such courts, &c.*—And be it further enacted, that no fee, reward, emolument, or gratuity whatsoever shall be demanded, taken, or received by any officer or minister of such courts for any matter or thing done in such courts in pursuance of this Act; and that upon the presenting of any such petition it shall be lawful for the

judges of the said courts respectively to assign counsel learned in the law, and to appoint a clerk or practitioner of such court, to advise and carry on such petition on the behalf of such society, who are hereby respectively required to do their duties therein without fee or reward.

**XVIII.** *Who shall be named in the orders of the court for making transfers.*—Provided always, and be it further enacted, that in all cases in which orders shall be made by any of the courts aforesaid for the transfer of stock or funds transferable at the Bank of England, the persons to be named in such orders respectively for making such transfers shall be the secretary, deputy secretary, or accountant-general of the governor and company of the Bank of England for the time being, or one of them, except in cases where one or more of the trustees in whose name such stocks or funds shall stand shall be ordered to transfer the same without the concurrence of any other or others of such trustees; anything herein contained to the contrary thereof in anywise notwithstanding.

**XIX.** *Act to be an indemnity to the bank.*—And be it further enacted, that this Act shall be and is hereby declared to be a full and complete indemnity and discharge to the governor and company of the Bank of England, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto, and that such acts and things shall not be questioned or impeached in any court of law or equity to their prejudice or detriment.

[Sect. 20, providing for executors, &c., to pay money due to societies before any other debts, is repealed by 4 & 5 Will. 4, c. 40, s. 12.]

**XXI.** *Effects of societies to be vested in the trustees or treasurers for the time being, who may bring and defend actions, &c.*—And be it further enacted, that all real

and heritable property, moneys, goods, chattels, and effects whatever, and all titles, securities for money, or other obligatory instruments and evidences or muniments, and all other effects whatever, and all rights or claims belonging to or had by such society, shall be vested in the treasurer or trustee of such society for the time being, for the use and benefit of such society and the respective members thereof, their respective executors or administrators, according to their respective claims and interests; and after the death or removal of any treasurer or trustee shall vest in the succeeding treasurer or trustee, for the same estate and interest as the former treasurer or trustee had therein, and subject to the same trusts, without any assignment or conveyance whatever, except the transfer of stocks and securities in the public funds of Great Britain and Ireland; and also shall, for all purposes of action or suit, as well criminal as civil, in law or in equity, in anywise touching or concerning the same, be deemed and taken to be, and shall in every such proceeding (where necessary) be stated to be, the property of the person appointed to the office of treasurer or trustee of such society for the time being, in his or her proper name, without further description: and such person shall, and he or she is hereby respectively authorized to bring or defend, or cause to be brought or defended, any action, suit, or prosecution, criminal as well as civil, in law or in equity, touching or concerning the property, right or claim aforesaid of or belonging to or had by such society; provided such person shall have been thereunto duly authorized by the consent of the majority of members present at any meeting of the society or committee thereof; and such person so appointed shall and may, in all cases concerning the property, right, or claim aforesaid of such society, sue and be sued, plead and be impleaded, in his or her proper name, as treasurer or trustee of such society, without other description; and no such suit, action, or prosecution shall be discontinued or abate

by the death of such person, or his or her removal from the office of treasurer or trustee, but the same shall and may be proceeded in by the succeeding treasurer or trustee in the proper name of the person commencing the same, any law, usage, or custom to the contrary notwithstanding; and such succeeding treasurer or trustee shall pay or receive like costs as if the action or suit had been commenced in his or her name, for the benefit of or to be reimbursed from the funds of such society.

**XXII.** *Limitation of responsibility of treasurers or trustees.*—And be it further enacted, that the treasurer or trustee, or any other officer of any society established under the authority of this Act, shall not be liable to make good any deficiency which may arise in the funds of such society, unless such persons shall have respectively declared by writing under their hands, deposited and registered in like manner with the rules of such society, that they are willing so to be answerable; and it shall be lawful for each of such persons, or for such persons collectively, to limit his, her, or their responsibility to such sum as shall be specified in any such instrument, or writing: provided always, that the said treasurer, trustee, and every other the officer of any such society, shall be and they are hereby declared to be personally responsible and liable for all moneys actually received by him, her, or them on account of or to and for the use of the said society.

**XXIII.** *Payment to persons appearing to be next of kin declared valid.*—And be it further enacted, that whenever the trustees of any society established under this Act, at any time after the decease of any member, have paid and divided any sum of money to or amongst any person or persons who shall at the time of such payment appear to such trustees to be entitled to the effects of any deceased intestate member, the payment

of any such sum or sums of money shall be valid and effectual with respect to any demand of any other person or persons as next of kin of such deceased intestate member, or as the lawful representative or representatives of such member, against the funds of such society, or against the trustees thereof; but nevertheless such next of kin or representatives shall have remedy for such money so paid as aforesaid against the person or persons who shall have received the same.

XXIV. *For payment of sums not exceeding 20l. where members die intestate.*—And be it further enacted, that in case any member of any society shall die, who shall be entitled to any sum not exceeding twenty pounds, it shall be lawful for the trustees or treasurer of such society, and they are hereby authorized and permitted, if such trustees or treasurer shall be satisfied that no will was made and left by such deceased member, and that no letters of administration or confirmation will be taken out of the funds, goods, and chattels of such depositor, to pay the same at any time after the decease of such member according to the rules and regulations of the said institution, and in the event of there being no rules and regulations made in that behalf, then the said trustees or treasurer are hereby authorized and permitted to pay and divide the same to and amongst the person or persons entitled to the effects of the deceased intestate, and that without administration in England or Ireland, and without confirmation in Scotland.

XXV. *Justices may hear cases of fraud and punish by fine or imprisonment.*—And be it further enacted, that for the more effectually preventing fraud and imposition on the funds of such societies, if any officer, member, or any other person being or representing himself or herself to be a member of such society, or the nominee, executor, administrator, or assignee of any member of

such society, or any other person whatever, shall in or by any false representation or imposition fraudulently obtain possession of the moneys of such society, or any part thereof, or, having in his or her possession any sum of money belonging to such society, shall fraudulently withhold the same, and for which offence no especial provision is made in the rules of such society, it shall be lawful for any one justice of the peace residing within the county within which such society shall be held, upon complaint made on oath or affirmation by an officer of such society appointed for that purpose, to summons such person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or, in default thereof, upon due proof, upon oath or affirmation, of the service of such summons, it shall and may be lawful for any two justices (a) residing within the county aforesaid to hear and determine the said complaint according to the rules of the said society; . . . and, upon due proof of such fraud, the said justices shall convict the said party, and award double the amount of the money so fraudulently obtained or withheld to be paid to the treasurer, to be applied by him to the purposes of the society so proved to have been imposed upon and defrauded, together with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings; and in case such person against whom such complaint shall be made shall not pay the sum of money so awarded to the person and at the time specified in the said order, such justices are hereby required, by warrant under their hands and seals, to cause the same to be levied by distress and sale of the goods of such person on whom such order shall have been made, or by other legal proceeding, together with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings, and also the costs and charges attend-

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(a) See the Summary Jurisdiction Act, 1879.

ing such distress and sale or other legal proceeding, returning the overplus (if any) to the owner; and, in default of such distress being found, the said justices of the peace shall commit such person so proved to have offended to the common gaol or house of correction, there to be kept to hard labour for such a period, not exceeding three calendar months, as to them shall seem fit: provided nevertheless, that nothing herein contained shall prevent the said society from proceeding by indictment or complaint against the party complained of; and provided also, that no party shall be proceeded against by indictment or complaint, if a previous conviction has been obtained for the same offence under the provisions of this Act.

[The portion omitted from this section is repealed by 4 & 5 Will. 4, c. 40, s. 3.]

[Sect. 26 regulated the proceedings necessary for the dissolution of any society, but it is doubtful whether it is a section applicable to benefit building societies.]

**XXVII.** *Rules to be made directing how disputes shall be settled.*—Provided always, and be it further enacted, that provision shall be made by one or more of the rules of every such society, . . . specifying whether a reference of every matter in dispute between any such society, or any person acting under them, and any individual member thereof, or person claiming on account of any member, shall be made to such of His Majesty's justices of the peace as may act in and for the county in which such society may be formed, or to arbitrators to be appointed in manner hereinafter directed; and if the matter so in dispute shall be referred to arbitration, certain arbitrators shall be named and elected at the first meeting of such society, or general committee thereof, that shall be held after the enrolment of its rules, none of the said arbitrators being beneficially interested, directly or indirectly, in the funds of the said society, of whom a certain number, not less than three, shall be chosen

by ballot in each such case of dispute, the number of the said arbitrators and mode of ballot being determined by the rules of each society respectively, the names of such arbitrators shall be duly entered in the book of the said society in which the rules are entered as aforesaid; and in case of the death, or refusal or neglect of any or all of the said arbitrators to act, it shall and may be lawful to and for the said society, or general committee thereof, and they are hereby required, at their next meeting, to name and elect one or more arbitrator or arbitrators as aforesaid to act in the place of the said arbitrator or arbitrators so dying, or refusing or neglecting to act as aforesaid; and whatever award shall be made by the said arbitrators, or the major part of them, according to the true purport and meaning of the rules of such society, . . . shall be in the form to this Act annexed, and shall be binding and conclusive on all parties, and shall be final, to all intents and purposes, without appeal, or being subject to the control of one or more justices of the peace, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity; and should either of the said parties in dispute refuse or neglect to comply with or conform to the decision of the said arbitrators, or the major part of them, it shall and may be lawful for any one justice of the peace residing within the county within which such society shall be held, upon good and sufficient proof being adduced before him of such award having been made, and of the refusal of the party to comply therewith, upon complaint made by or on behalf of the party aggrieved, to summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or in default thereof, upon due proof, upon oath, of the service of such summons, any (a) two justices of the

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(a) See the Summary Jurisdiction Act, 1879.



peace may proceed to make such order thereupon as to them may seem just; and if the sum of money so awarded, together with a sum for costs not exceeding the sum of ten shillings, as to such justices shall seem meet, shall not be immediately paid, then such justices shall, by warrant under their hands and seals, cause such sum and costs as aforesaid to be levied by distress or by distress and sale of the moneys, goods, chattels, securities, and effects belonging to the said party or to the said society, or other legal proceeding, together with all further costs and charges attending such distress and sale or other legal proceeding, returning the overplus (if any) to the said party, or to the said society, or to one of the treasurers or trustees thereof; and in default of such distress being found, or such other legal proceeding being ineffectual, then to be levied by distress and sale of the proper goods of the said party, or of the officer of the said society, so neglecting or refusing as aforesaid, by other legal proceedings, together with such further costs and charges as aforesaid, returning the overplus (if any) to the owner: provided always, that whatever sums shall be paid by any such officer, so levied on his or her property or goods in pursuance of the award of arbitrators or order of any justices, shall be repaid, with all damages accruing to him or her, by and out of the moneys belonging to such society, or out of the first moneys which shall be thereafter received by such society.

[The portions omitted from this section are repealed by 4 & 5 Will. 4, c. 40, s. 3.]

[Further provision for the settlement of disputes is made by 4 & 5 Will. 4, c. 40, ss. 7, 8.]

XXVIII. *Reference of disputes to justices, if so directed by the rules of the society.*—And be it further enacted, that if by the rules of any such society it is directed that any matter in dispute as aforesaid shall be decided by justices of the peace, it shall and may be lawful for any such justice on complaint being made to him

of any refusal or neglect to comply with the rules of such society by any member or officer thereof, to summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons ; and upon his or her appearance, or in default thereof, upon due proof, on oath or affirmation, of the service of such summons it shall and may be lawful for any two justices to proceed to hear and determine the said complaint according to the rules of the said society ; and in case the said justices shall adjudge any sum of money to be paid by such person against whom such complaint shall be made, and such person shall not pay such sum of money to the person and at the time specified by such justices, they shall proceed to enforce their award in the manner hereinbefore directed to be used in case of any neglect to comply with the decision of the arbitrators appointed under the authority of this Act.

**XXIX. Orders of justices to be final.**—And be it further enacted, that every sentence, order, and adjudication of any justices under this Act shall be final and conclusive to all intents and purposes, and shall not be subject to appeal, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity, and that no suspension, advocation, or reduction shall be competent.

[Sect. 30 is repealed ; see 6 & 7 Will. 4, c. 32, s. 6.]

[Sect. 31, providing for payment of funds into the Bank of England, on receipts, does not apply to benefit building societies.]

[By sect. 32 it was provided that minors may be members and have legal authority to act, but as a minor cannot execute a mortgage, it is doubtful whether this section is applicable to a benefit building society.]

**XXXIII.** *Societies shall make annual audits and statement of the funds to the members.*—And be it further enacted, that the rules of every such society shall provide that the treasurers, trustees, stewards, or other principal officer thereof shall, once in every year at least, prepare or cause to be prepared a general statement of the funds and effects of or belonging to such society, specifying in whose custody or possession of the said funds or effects shall be then remaining, together with an account of all and every the various sums of money received and expended by or on account of the said society since the publication of the preceding periodical statement; and every such periodical statement shall be attested by two or more members of such society appointed auditors for that purpose, and shall be countersigned by the secretary or clerk of such society; and every member shall be entitled to receive from the said society a copy of such periodical statement, on payment of such sum as the rules of such society may require, not exceeding the sum of sixpence.

[Sects. 34—36, providing for quinquennial returns, do not apply to benefit building societies.]

**XXXVII.** *Exemption from stamp duties.*—And be it further enacted, that no copy of rules, power, warrant, or letter of attorney granted or to be granted by any persons [*sic*] as trustee of any society established under this Act, for the transfer of any share in the public funds standing in the name of such trustee, nor any receipts given for any dividend in any public stock or fund or interest of exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of any such society, nor for any money received by any member, his or her executors or administrators, assigns or attorneys, from the funds of such society, nor any bond nor other security to be given to or on account of any such society, or by the

treasurer or trustee or any officer thereof, nor any draft or order, nor any form of assurance, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorized to be given, issued, signed, made, or produced in pursuance of this Act, shall be subject or liable to or charged with any stamp duty or duties whatsoever.

[By the Inland Revenue Act, 1868, the exemption does not extend to a mortgage securing more than £500].

**XXXVIII. Construction of Act.**—And be it further enacted, that the word “society” in this Act shall be understood to include . . . society or societies, institution or institutions; the word “rules” to include rules, orders, and regulations; the word “county” to include county, riding, division, or place; and the words “treasurer or trustee” to include treasurers or trustees; and the word “person” to include persons; and the word “book” to include books; and the word “bond” to include bonds; “name” to include names; “account” to include accounts; “member” to include members and honorary members; . . . unless it be otherwise specially provided.

[Sects. 39—41 are temporary and formal provisions.]

#### FORM OF AWARD.

We, the major part of the arbitrators duly appointed by the Society, established at , in the county of , do hereby award and order, that *A. B.* [*specifying by name the party or the officer of the society*] do, on the day of , pay to *C. D.* the sum of [or we do hereby reinstate in or expel *A. B.* from the said society [*as the case may be*]]. Dated this day of , one thousand eight hundred and

*E. F.*  
*G. H.*

[A form of bond is also provided by the Act, but for the reasons stated under sect. 11, p. 68, it is doubtful whether it is applicable to a benefit building society.]

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4 & 5 WILL. 4, CAP. 40.

*An Act to amend an Act of the Tenth Year of His late Majesty King George the Fourth, to consolidate and amend the Laws relating to Friendly Societies.*

[30th July, 1834].

[Sect. 1 repeals ss. 6, 20, and 30, parts of ss. 34 and 35, and s. 36, of 10 Geo. 4, c. 56.]

[Sect. 2 relates only to the purposes for which societies may be formed under 10 Geo. 4, c. 56, and does not apply to benefit building societies.]

[Sect. 3 repeals 10 Geo. 4, c. 56, s. 4, and part of s. 7.]

IV. *Two transcripts of rules to be submitted to [the registrar], by whom they are to be certified—[Registrar] to certify both transcripts—Fee payable to [registrar]—One transcript to be returned to society—Rules, &c., to be binding when certified.—And be it further enacted, that two transcripts, fairly written on paper or parchment, of all rules made in pursuance of the said recited Act or this Act, signed by three members, and countersigned by the clerk or secretary (accompanied, in the case of an alteration or amendment of rules, with an affidavit of the clerk or secretary or one of the officers of the said society that the provisions of the said recited Act, or of the Act under which the rules of the society may have been enrolled, have been duly complied with), with all con-*

venient speed after the same shall be made, altered or amended, and so from time to time after every making, altering, or amending thereof, shall be submitted . . . to the [registrar] (a) for the purpose of ascertaining whether the said rules of such society, or alteration or amendment thereof, are calculated to carry into effect the intention of the parties framing such rules, alterations, or amendments, and are in conformity to law and to the provisions of the said recited Act or this Act; and that the said [registrar] shall advise with the said clerk or secretary, if required, and shall give a certificate on each of the said transcripts, that the same are in conformity to law and to the provisions of the said recited Act and this Act, or point out in what part or parts the said rules are repugnant thereto; and that the [registrar], for advising as aforesaid, and perusing the rules, or alterations or amendments of the rules of each respective society, and giving such certificates as aforesaid, shall demand no further fee than that specified in the said recited Act; and one of such transcripts when certified by such [registrar], shall be returned to the society, and the other of such transcripts shall be [kept by the registrar], and that all rules, alterations and amendments thereof, from the time when the same shall be certified by the said [registrar], shall be binding on the several members and officers of the said society, and all other persons having interest therein.

V. [*Registrar*] *not to be entitled to fee in respect of alterations within three years, nor for certificate to rules being copies of those already enrolled.*—Provided always, and be it enacted, that the said [registrar] shall be entitled to no further fee for or in respect of any alteration or amendment of any rules upon which one fee has been already paid . . . within the period of three years :

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(a) The words in brackets are the alterations introduced by 37 & 38 Vict. c. 42, s. 7.

provided also, that if any rules, alterations, or amendments, are sent to such [registrar], accompanied with an affidavit of being a copy of any rules, or alterations or amendments of the rules, of any other society, which shall have been already enrolled under the provisions of the said recited Act or this Act, the said [registrar] shall certify and return the same as aforesaid, without being entitled to any fee for such certificate.

[Sect. 6 relates only to returns of sickness, &c., and does not apply to benefit building societies.]

VII. *If rules of society direct reference in case of dispute to arbitration, and society refuse to grant arbitrators, &c., justices may determine the dispute.*—And whereas in and by the said recited Act provision is directed to be made by the rules of every society whether reference of any matter in dispute shall be made to justices or to arbitrators: and whereas it is expedient that further provision should be made in case the reference is to arbitrators; be it therefore enacted, that when the rules of any society provide for a reference to arbitrators of any matter in dispute, and it shall appear to any justice of the peace, on the complaint on oath of a member of any such society, or of any person claiming on account of such member, that application has been made to such society, or the steward or other officer thereof, for the purpose of having any dispute so settled by arbitration, and that such application has not within forty days been complied with, or that the arbitrators have neglected or refused to make any award, it shall and may be lawful for such justice to summon the trustee, treasurer, steward or other officer of the society, or any one of them against whom the complaint is made, and for any two justices to hear and determine the matter in dispute, in the same manner as if the rules of the said society had directed that any matter in dispute as aforesaid should be decided by justices of the peace, anything in the said recited Act contained to the contrary notwithstanding.

**VIII. *Provision in case member of society is expelled.***—And be it further enacted, that in case any member of a friendly society established under the said recited Act or this Act shall have been expelled from such society, and the arbitrators or justices, as the case may be, shall award or order that he or she shall be reinstated, it shall and may be lawful for such arbitrators or justices to award or order, in default of such reinstatement, to the member so expelled, such a sum of money as to such arbitrators or justices may seem just and reasonable; which said sum of money, if not paid, shall be recoverable from the said society, or the treasurer, trustee, or other officer, in the same way as any money awarded by arbitrators is recoverable under the said recited Act.

[Sect. 9 provides that the funds of friendly societies, may be deposited in savings' bank, under 9 Geo. 4, c. 92, and does not apply to benefit building societies.]

[Sect. 10 provides that members of friendly societies may be witnesses, and is not applicable to the present law.]

[Sect. 11 provides that no fee shall be charged for oaths before magistrates in obtaining payment of sick pay, and does not apply to benefit building societies.]

**XII. *Executors, &c., of officers of friendly society to pay money due to society before any other debts.***—And be it further enacted, that if any person already appointed or who may hereafter be appointed to any office in a society established under the said recited Act or this Act, and being entrusted with the keeping of the accounts, or having in his hands or possession, by virtue of his said office or employment, any moneys or effects belonging to such society, or any deeds or securities relating to the same, shall die . . . his heirs executors, administrators . . . or other persons having legal right . . . shall, within forty days



after demand made in writing by the order of any such society or committee thereof, or the major part of them assembled at any meeting thereof, deliver and pay over all moneys and other things belonging to such society to such person as such society or committee shall appoint, and shall pay, out of the estates, assets, or effects, heritable or moveable, of such person, all sums of money remaining due which such person received by virtue of his said office or employment, before any other of his debts are paid or satisfied . . . and all such assets, lands, goods, chattels, property, estates, and effects shall be bound to the payment and discharge thereof accordingly.

[This section also provided for priority in case of bankruptcy, &c. : but that is repealed by the Bankruptcy Acts.]

[Sect. 13 provided that letters to and from barristers and advocate were to be free of postage, and is not now in force.]

[Sect. 14 provided for the provisions of former statutes to continue in force as to societies established under them until they shall conform to the provisions of 10 Geo. 4, c. 56, as hereby amended, and is now expired ; and ss. 15, 16, and 17 are merely formal.]

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## PART III.

### BUILDING SOCIETIES NOT REGISTERED.

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1. The statutes, contained in the previous parts of this work, relate only to such societies as, by obtaining registration thereunder, become entitled to certain privileges. It is important, however, to consider the legal position of the members of associations which carry on the business of Building Societies, but do not comply with the requirements as to registration of any Act of Parliament. In the absence of provision to the contrary in the statute law, such societies would not be necessarily unlawful because they had failed to acquire a statutory status. There is nothing in the common law that deprives individuals of the right of associating themselves for any lawful purpose, if they are content to accept the remedies against fraud or embezzlement which the common law (amended in 1868 by Russell Gurney's Act, 31 & 32 Vict. c. 116,) gives them. When, however, the Legislature grants exceptional facilities to certain forms of association, it has sometimes limited the common law right of persons to combine, either with or without such facilities.

2. An example of this is afforded by the Act of 1870, relating to Life Assurance Companies (33 & 34 Vict. c. 61), which provides that, "any person or persons, corporate or unincorporate (not being registered under the Acts relating to friendly societies) who issue or are liable under policies of assurance upon

human life within the United Kingdom, or who grant annuities upon human life within the United Kingdom," shall be liable to heavy penalties for failure to comply with the provisions of that statute. In like manner, the Companies Act, 1862 (section 4), enacts that "no company, association, or partnership consisting of more than twenty persons shall be formed, after the commencement of this Act, for the purpose of carrying on any . . . business (a) that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of parliament, or of letters patent, or is a company engaged in working mines within and subject to the jurisdiction of the stannaries."

8. As amongst the objects of a building society is the acquisition of gain for its members, or, at all events, for those who are investors, it would appear that any association, or partnership, of more than twenty persons, formed, after the 2nd November, 1862, to carry on the business of a building society, is illegal, which has not been enrolled under the Act of 1836, nor incorporated under the Act of 1874, nor registered under the Industrial and Provident Societies Acts or the Companies Acts. The question arises, whether all parties concerned might not be found guilty of a misdemeanor at common law, for violation of the requirements of the statutes, since, in the words of Lord CAMPBELL, "to violate an Act of parliament, although there is no specific penalty attached to the violation, is a misdemeanor, and a person who does so is liable

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(a) "The word 'business' has a more extensive signification than 'trade.'" Per WILLES, J., in *Harris v. Amery* (L. R. 1 C. P. 148), where farming was held to be a business within the meaning of the Companies Act, 1862.

to be indicted and punished" (a). It is not the practice, however, of modern legislation to rely on the procedure for a common law misdemeanor alone. Usually, provision is made for meeting disobedience to the injunctions of a statute by an appropriate penalty: but no such provision is contained in the Companies Acts with regard to the prohibition of unregistered companies.

4. A question of more practical importance probably than the one of criminal liability, is that of the means which persons, joining an unregistered society, have of enforcing their claims against the officers or the persons whom they trust. The courts would hardly give effect to the rules of a society which by its constitution was illegal, or recognise the association in any way as an aggregate body, and it might be doubted whether even Russell Gurney's Act (referred to above), beneficial as its operation is, would avail to protect the members of such an association, if its illegality were proved. That Act provides for the punishment of any person "being a member of any co-partnership, or being one of two or more beneficial owners of any money," &c., who "shall steal or embezzle any such money, &c., of or belonging to any such co-partnership or to such joint beneficial owners." But it is questionable whether the persons who had parted with their money to an association which is illegal, would be entitled to be considered as "joint beneficial owners," within the meaning of the Act. *In pari delicto, potior est conditio possidentis.*

5. It is true that it does not always follow, because an agreement to form a given partnership or association is illegal, that those who subscribe to its formation

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(a) In his judgment in *Longworth's case*, 1859; 1 De G. F. & J. 31.

cannot get back their subscriptions. If, for instance, A. pays money to B., to be applied by him to some illegal purpose, A. may require B. to restore the money, if B. has not already parted with it (*b*). But, in such a case, it is not sought to enforce an illegal contract, but rather to prevent the continuance of what is illegal. It has been held, moreover, that the survivor of two directors, who were also the trustees, of a mining association (which, it was contended, was illegally constituted, although that point was not decided) was liable as trustee to account for the moneys received and paid by them, and a receiver and manager was appointed by the court (*c*). But, as a general rule, a court of equity will not assist a person to recover property which he has transferred to another person for some illegal purpose (*d*).

A further consequence of illegality in a contract of partnership, is that the members have no remedy against each other, for contribution or apportionment in respect of the partnership dealings and transactions; and if one member of an illegal partnership institutes proceedings against another, arising out of such transactions, the defendant can resist the proceedings on the ground of illegality (*e*).

6. That these considerations are not without practical weight appears from the facts stated in the report of the Hon. E. Lyulph Stanley to the friendly societies' commissioners :

“ There are in Sheffield a large number of societies which have reached a greater development there than

(*b*) See *Varney v. Hickman*, 5 C. B. 271.

(*c*) *Sheppard v. Owenford*, 1855, 1 K. & J. 491.

(*d*) See *Brackenbury v. Brackenbury*, 2 J. & W. 391; *Groves v. Groves*, 3 Y. & J. 163.

(*e*) See *Thomson v. Thomson*, 7 Ves. 470; *Cousins v. Smith*, 13 Ves. 542. See further, on this subject, Lindley on the Law of Partnership.

anywhere else, and which have grown out of the old fashioned money clubs. They are called Funding societies, and in many respects resemble Terminating building societies, but they lend on all kinds of security, and not only on land. They are brought out by the managers in series."

Of one series, he says, "the 33rd was founded in 1871."

"The number of shares issued is limited, and the amount of each share is 30*l*. A shareholder pays 5*s*. a share every four weeks, and goes on paying till his instalments with share of the profits made by lending out the money amount to 30*l*. The shareholders are then paid off, and the society is wound up. The borrowers, who must be members, take a share for each sum of 30*l*. which they wish to borrow. They pay a premium not exceeding 4*l*. 10*s*. for each 30*l*., and they pay 5*l*. per cent. annual interest, which has to be paid monthly at the same time as the instalments on their shares. The borrowers give promissory notes payable to the trustee of the society, and such other security as the committee require. The effect of the rates of interest, premiums, &c., is to give the depositing members about 7 per cent. for their money, and the managers are paid by a system of fees and perquisites."

The amount of money in the hands of the managers of this series, in connection with their successive societies, he states, "is to be reckoned by hundreds of thousands": and that there are in Sheffield many other similar societies started in imitation of these.

7. Mr. Stanley reports that these societies "are conducted under the common law, not registered as companies, and rest for their success on the ability and honesty of the manager and on the confidence which people generally have in him. Not only individuals, but friendly societies and trades unions, deposit their funds as shareholders in these funding societies." Some of these societies have been conducted with probity and

even with success. In others heavy losses have been sustained, and the depositors have found themselves wholly without remedy. If the law relating to Unregistered bodies, having for object the acquisition of gain, be as we have stated our view of it, it would seem clearly to be applicable to all such societies, and to place their funds in a certain degree of peril. It will be not unworthy of the attention of the legislature to so frame any enactments on the subject as to embrace within the beneficial system of registration as friendly societies all associations having a lawful object, and thus to enable these and many other kindred institutions to extricate themselves from their present anomalous position.

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**PART IV.**  
**ALPHABETICAL DIGEST**  
**OF THE**  
**STATUTE LAW AND CASES RELATING TO**  
**BUILDING SOCIETIES.**

\*\*\* The Numbers in brackets refer to articles not pages.

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**ACCOUNTS.**

1. *To be rendered periodically by the society.*—The secretary or other officer, of every society under the Building Societies Act, 1874, is, once in every year at least, to prepare an account of all the receipts and expenditure of the society since the preceding statement, and a general statement of its funds and effects, liabilities and assets. Every such account and statement is to be attested by the auditors, to whom the mortgage deeds and other securities belonging to the society are to be produced ;

Such account and statement are to be countersigned by the secretary or other officer ;

Every member, depositor, and creditor for loans is entitled to receive from the society a copy of such account and statement ;

A copy thereof is to be sent to the registrar within fourteen days after the annual or other general meeting, at which such account and statement is presented ;

Another copy thereof is to be suspended in a conspicuous place in every office of the society. 87 & 88 Vict. c. 42, s. 40.



A penalty of 5*l.* has been recovered against the manager of a society for failure to send such statement to the registrar.

*To be rendered by officers.* See OFFICERS.

ACKNOWLEDGMENTS for loans must contain ss. 14 & 15 of 37 & 38 Vict. c. 42. See POWER TO BORROW.

ACQUIESCENCE. 2. Mr. W. Griffith, a member of a building society, had given notice of withdrawal on 25th October, 1871. On 28th May, 1872, new rules were certified. In pursuance of the new rules Mr. Griffith received, between August, 1872, and October, 1874, six dividends, giving receipts on a form at the head of which was printed part of rule 14 and to the following effect:—"Received of the trustees of the Planet Benefit Building and Investment Society [the name of the society before its incorporation] the sum of       , being a dividend of £        per cent. on the amount of my investment in the said society, and in part payment thereof, pursuant to the above rule." In the latter receipts Mr. Griffith struck out the words, "and in part payment, &c.," before handing them over with his signature. From August, 1871, to the end of August, 1874, no profits were earned by the society; after that period, the affairs of the society having improved, amended rules were registered, 2nd February, 1875, providing that on the 30th June and 31st December in every year, commencing with the year 1875, interest for the six months last preceding, at such rate, not exceeding 5*l.* per cent. per annum, as the board might from time to time determine, should be credited to the registered holder of each investment share, to be computed upon the amount of the respective shares at the commencement of such period of six months, exclusive of prior interest; but that no interest should be paid upon any investment in respect of the period between the 31st day of April, 1871, and the 11th day of January,

1875. Mr. Griffith was a member of the committee appointed to revise the rules, and was present at the meeting held 8th January, 1875, at which the amended rules were adopted: he had also attended subsequent meetings.

The registrar held, that acquiescence on the part of Mr. Griffith had been established, and made an award: that the society on 1st August, 1878, was indebted to Mr. Griffith as a withdrawing member in the sum of 49*l.* 10*s.* 9*d.*, and no more; that Mr. Griffith having possessed himself of a cheque on the bankers of the society for the said sum of 49*l.* 10*s.* 9*d.*, payable to his order, was entitled to be paid the amount of such cheque on delivering up the certificates of his shares; and that he was not entitled to any interest or damages by reason of the non-payment of the cheque on first presentation.

No direction was given as to costs. [The rules of the society provided that on a reference of a dispute to the arbitrators, the costs of the reference should be paid by such party as the arbitrators should direct, but it did not appear clear that such provision would apply to a reference to the registrar under the statute.] — *Griffith v. Planet Building Society*, March, 1879.

### ACTS.

8. The Act to consolidate and amend the laws relating to *Building Societies*, 37 & 38 Vict. c. 42 (1874), is a public Act, and extends to England, Scotland, and Ireland.

It repeals the Act 6 & 7 Will. 4, c. 82, but such repeal is not to affect any subsisting society certified under that Act, until such society shall have obtained a certificate of incorporation under the Building Societies Act, 1874 (s. 7).

It commenced and took effect on the 2nd November, 1874 (s. 2), and has been amended by Acts in 1875 and 1877.

See also REPEALED ACTS.

## ACTION.

4. *In connection with mortgages.*—An action, for arrears due on a mortgage, and generally for causes arising out of the relation of mortgagor and mortgagee, between the member and an unincorporated society, may be maintained: *Morrison v. Glover*, 1849, 4 Ex. 430; 19 L. J. 20, Ex.; *Fleming v. Self*, 1854, 8 De G. M. & G. 997; 24 L. J. 29, Ch.; 1 Jur. (N.S.) 25; "Scratchley on Copyholds," app. 27; *Farmer v. Giles*, 1860, 4 H. & N. 753; 30 L. J. 65, Ex.

5. An action, for breach of the covenant for repayment in the mortgage deed, may be maintained, notwithstanding the directors have their remedy by collection of rents or by sale: per CAMPBELL, C. J.; *Reeves v. White*, 1852, 17 Q. B. Rep. 995; 21 L. J. 169, Q. B.

6. If the rules provide that no action shall be brought without the consent of a *special meeting*, the meeting giving such consent need not be one called for that purpose alone, but may proceed to other business, if due notice has been given: *Cutbill v. Kingdom*, 1847, 1 Ex. 494; 17 L. J. 177, Ex.

See also DISPUTES, JURISDICTION, MORTGAGES, REDEMPTION.

7. The case of *Mulkern v. Lord*, decided in the House of Lords on 7th April, 1879 (L. R. 4 App. Cas. 188), in conformity with several previous decisions (*Morrison v. Glover*, 4 Ex. 430; *Cutbill v. Kingdom*, 1 Ex. 494; *Reg. v. Trafford*, 4 El. & Bl. 122; 24 L. J. 20, M. C.; *Fleming v. Self*, 8 De G. M. & G. 1030), establishes that, in a benefit building society under 6 & 7 Will. 4, c. 82, the rule for arbitration and the provisions of the Friendly Societies Act of 1829, 10 Geo. 4, c. 56, are not applicable to disputes which arise between the member and the society in the capacity of mortgagor and mortgagee, and that in respect of such disputes the jurisdiction of the courts of law is not ousted.

ADMINISTRATION. 8. See DEATH. *Moors v. Marriott*, L. R. 7 Ch. Div. 548.

ALTERATION of Rules. See RULES.

AMALGAMATION. See TRANSFER.

APPEAL, Determination by arbitrators, or by court, or by registrar, not subject to. See DISPUTES.

APPOINTMENT by arbitrators, notice of must be properly served. See DISPUTES.

APPROPRIATION by ballot. 9. The rules of a building society provided for appropriations by ballot and sale alternately ; but no member to be eligible to participate in any appropriation while in arrear to the society (with an exception not applying to the particular case). On the 26th August, 1879, Mr. Valeriani, a member of the society, who had always paid his subscriptions by cheque, paid in a cheque for 18*l.*, directing it to be appropriated in certain proportions to payments on three shares held by him, and on a share held by another person, and entries initialed by the proper officer of the society were accordingly made in the pass books. On the 27th August a ballot took place, and one of his shares was drawn. On the 28th the cheque, endorsed by a trustee of the society, was presented, and returned marked "N. S." (not sufficient assets). In point of fact, Mr. Valeriani's balance stood at a little under 16*l.* He was informed by his bankers the same day, and went at once to the office of the society, but not finding the secretary left a card asking him if the cheque had been returned to hold it, and he would pay cash for it. But for the amount of the cheque, Mr. Valeriani was in arrear 5*s.* on the share drawn, and on this ground the society refused him the benefit of the appropriation. (Whether he was in arrear on his three shares as a whole did not appear, contradictory assertions being made on the subject by himself and the secretary.) Mr. Valeriani swore that when he called to

see the secretary on the 28th, he had the 18*l.* in his pocket ; that he had called several times to offer payment but that this had been refused, as money could only be received on a special night ; that he went on the pay night, 23rd September, and left his money. The cheque, nevertheless, was not returned to him, and he did not see it until it was produced at the hearing. The secretary stated that the cheque was retained on account of Mr. Valeriani having receipts for the amount covered by it, and it appeared that he had been written to on 5th September to produce his books for correction. The 18*l.* left by him on the 23rd September was, it further appeared, only passed to his account on the 30th, being then appropriated in the manner originally directed by him as to the cheque. The trustee present on 23rd September swore that Mr. Valeriani was then informed that if he left the money it must be on his own responsibility, and that the society could not accept it in payment of the cheque.

The registrar held that, the cheque having been taken as money, the appropriation was duly made, and made an award that Mr. Valeriani was entitled to the benefit of it : *Valeriani v. Pall Mall Building Society*, November, 1879.

ARBITRATION, Determination of disputes by. See DISPUTES.

ARBITRATORS, Appointment of. See DISPUTES.

- „ Number of, and Mode of Ballot to be specified in Rules. See DISPUTES.
- „ refusing or neglecting to make an Award. See DISPUTES.
- „ dying, or refusing or neglecting to act, may be replaced. See DISPUTES.
- „ Notice of Appointment by, must be properly served. See DISPUTES.

## ASSIGNMENT.

10. *Of leaseholds, subject to a mortgage to be made thereof.—As to whether assignees had notice that mortgage deed would contain a power of sale.*—A member of a building society received an advance out of its funds, and deposited the lease of his land as security for repayment, at the same time signing an agreement to execute a mortgage. He afterwards executed a mortgage to the trustees containing a power of sale, under which, on his having made default in payment of his instalments, the trustees sold the property for the remainder of the term to the plaintiff. Previously, however, to the execution of the mortgage, the mortgagor assigned the premises, “subject to the mortgage to the building society,” to the defendants for valuable consideration, who thereby became possessed of the legal estate.

CRANWORTH, L. C., held (affirming the decision of the Master of the Rolls) that the defendants must be taken to have had notice that the mortgage would contain a power of sale, and they were declared to be trustees of the property for the plaintiff: *Leigh v. Lloyd*, 1865; 2 De G. J. & S. 330; 34 L. J. (N.S.) 646, Ch.

## ATTORNMENT.

11. *Attornment.—Bill of sale.—Mortgage.—Excessive rent.—Distress.—Fraud on bankruptcy laws.—Bankruptcy Act, 1869, sect. 34.—Fixtures.*—A Mortgage deed contained a covenant by the mortgagee that he would not require payment of the principal for a period of five years, if the interest was punctually paid; and if the mortgagor should not have become bankrupt, or filed a liquidation petition, or parted with possession of the mortgage premises, or ceased to carry on his business thereon. The mortgagor attorned tenant from year to year to the mortgagee in respect of the mortgaged premises at a rent which was nearly seven times the letting value of the premises.

The deed was not registered under the Bills of Sale Act.

A few months after the execution of the mortgage, the mortgagor filed a liquidation petition, and the mortgagee sought to distrain for a year's rent under the 34th section of the Bankruptcy Act, 1869.

*Held*, that the arrangement was void as against the trustee in the liquidation, being a mere device to give the mortgagee the benefit of the 34th section of the Act in the event of the mortgagor's bankruptcy.

*Semble*, that a release by the mortgagee of a portion of the property comprised in the mortgage deed entirely determined the tenancy created by the attornment clause: *Re Thompson, Ex parte Williams*, Nov., 1877, Ct. of App. (JAMES, BAGGALLAY, and THESIGER, L. JJ.); L. R. 7 Ch. Div. 138 ; 37 L. T. (N.S.) 764.

12. *Attornment clause in mortgage deed.*]

In the case of *Re Bowes, Ex parte Jackson*, 1880, (42 L. T. (N.S.) 409), BACON, C. J., *held*, that in the absence of intention to commit a fraud upon the bankruptcy laws, the amount for which the mortgagor attorned tenant to the mortgagee was immaterial, and that, therefore, the mortgagee was entitled to the proceeds realized, under a distress, up to the amount lent.

In that instance, the letting value of the premises was admitted to be only 150*l.* a year, but the debtor attorned to the creditor, as tenant, at the rent of 8,000*l.* a year, payable yearly "in advance." There were goods and chattels on the premises of considerable value, about 7,000*l.* The deed was not registered under the Bills of Sale Act.

In this decision, BACON, C. J., reversed one given by the registrar, and said that he considered that he was following the Court of Appeal in the case of *Re Stockton Iron Furnace Co.* (L. R. 10 Ch. Div. 335 ; 40 L. T. (N.S.) 19.)

A little later, the case of *Re Bowes, Ex parte Jackson*, came before BAGGALLAY, COTTON, and THESIGER, L. JJ., in the Court of Appeal (L. R. 14 Ch. Div. 725 ; 43 L. T. (N.S.) 272)

when the foregoing decision of BACON, C. J., was reversed, on the ground that the case of *Re Stockton Iron Furnace Co.*, (*sup.*) did not apply, but that the matters fell within *Re Thompson*, *Ex parte Williams* (*sup.*)

18. *Attornment.*—*Distress, Bankruptcy Act, 1869.*—*Held*, (affirming the decision of BACON, C. J.,) that the effect of the attornment clause was to create the relation of landlord and tenant between the parties, and that the distress was rightly levied under the Bankruptcy Act, 1869, sect. 84. *Re Threlfall*, *Ex parte Queen's Building Society*, Nov., 1880, Ct. of App. (JAMES, COTTON, and LUSH, L. JJ.,); L. R. 16 Ch. Div. 274; 44 L. T. (N.S.) 74.

14. *Distress.*—*As to liability of a society afterwards incorporated.*—Application was made to the judge of the *Aberdare County Court*, on behalf of J. D. T., trustee of the *Bristol Equitable Building Society*, and D. J., a bankrupt, for an order declaring that a certain distress levied by the society for 800*l.*, upon the goods and chattels of a Bankrupt, was fraudulent and void as against the Trustee; and also for an order declaring that such society should pay to the trustee the sum of 120*l.* 4*s.* 8*d.*, being the value of the goods and chattels so distrained upon.

In July, 1871, the bankrupt executed a mortgage for 500*l.*, and, according to the rules of the society, he was to pay an instalment of 4*l.* 11*s.* 8*d.* per month. These payments were kept up until 1875, when, in consequence of depression in trade and heavy ground rents, he went to Bristol, and there saw the solicitor and manager of the society, and made arrangements to pay interest at the rate of 5*l.* per cent. upon the sum of 800*l.*, which was the balance then considered



to be due. He continued to pay, in accordance with this arrangement, until November, 1880, after which no payment was made, and on the 13th September, 1881, the society levied. On the 17th September, D. J. was adjudicated a bankrupt, and on the 22nd the goods and chattels were sold. They had been previously appraised, the valuation amounting to 120*l.* 4*s.* 8*d.* J. D. T. was appointed trustee on the 3rd October.

It was said that the distress levied on behalf of the society was justified under an attornment clause contained in the mortgage deed, by which "the said D. J. covenants to become tenant of the trustees for the time being henceforth during their will at a net yearly rent of 150*l.*, payable on the usual quarter days, clear of all rates and taxes." It was also covenanted that the said D. J. should pay the respective ground rents of 25*l.* and 8*l.*

It was contended that the attornment was void, as against the trustee, in consequence of the mortgage deed reserving as rent more than a fair annual letting value, and was, therefore, a mere device to enable the society or the trustees to obtain security upon the goods and chattels as against the general body of creditors. The observations were cited of BAGGALLAY and COTTON, L. JJ., in *Re Bowes, Ex parte Jackson*; *Re Thompson, Ex parte Williams*; and *Re Stockton Iron Co.*, (*supra*, pp. 103-4.); all of which, it was argued, were exactly in accordance with the principles in this case. A bill of sale would have to be registered, and therefore become known, but such an attornment clause as this would enable the society to sweep away the whole of the estate, to the prejudice of the general body of creditors. The evidence filed clearly showed that the property was not worth the annual rent reserved.

The premises consisted of a house and shop in Harriet Street (occupied by the bankrupt), the annual value of which in 1871 was 40*l.*, cottage adjoining 12*l.*, and a room used as a hairdresser's shop 9*l.* 18*s.* The bankrupt agreed to pay rates and taxes, 1*l.* 11*s.*, and this being deducted, the net annual value never exceeded 54*l.* 7*s.* The assistant overseer, stated that in 1871 the shop was rated at 40*l.* gross, and the cottage 6*l.* 10*s.*, in all 46*l.* 10*s.*, which he considered the fair annual letting value. When he made a re-valuation in 1878 the shop was rated at 41*l.* gross, cottage 9*l.* 12*s.*, barber's shop 6*l.* 5*s.*, making a total of 56*l.* 17*s.* ; and it was certainly impossible to obtain a *bond fide* tenant for more than 56*l.*

The deed containing the clause for Attornment of Tenancy at will of the Trustees was executed in 1871, and the society was Incorporated on the 5th of December, 1879.

It was contended further, that as the Distress was made by the Incorporated society it was illegal inasmuch as the Covenant for tenancy at will was between the Trustees named and the Bankrupt, and this having ceased when the society was incorporated, there was no power to distrain.

FALCONER, county court judge, held as the Mortgagor had Attorned Tenant at a certain rent, although the sum might have been in excess of the annual value, he was bound by that act, and the Trustee could not be in a better position than the Bankrupt. It was clear to him that the Incorporation of the society did not operate as a determination of the Tenancy at will.

Application dismissed with costs : *Re Bristol Equitable Building Society*, and *David Jones*, a bankrupt, Aberdare County Court, Nov., 1881.

AUDITORS, Appointment of. See OFFICERS.  
,, to attest Accounts. See ACCOUNTS.  
,, to inspect Securities. See ACCOUNTS.

AWARD of Arbitrators should be made *within twenty-one days*. See DISPUTES.  
,, of Arbitrators may be enforced by the Court. See DISPUTES.  
,, of Arbitrators, Court, or Registrar, is *final*. See DISPUTES.

BALLOT for Arbitrators, mode of, to be determined by Rules. See DISPUTES.

BENEFIT BUILDING SOCIETIES ACT of 1836.  
See ACTS, REPEALED ACTS.

### BOND.

15. *Given to stay criminal proceedings is illegal.—*  
*Deficiency in treasurer's accounts.*—In an action on a bond in the penal sum of 1,400*l.*, given by the defendant to the plaintiffs, as trustees of a friendly society, to secure the sum of 700*l.*, part of a debt of 1,400*l.*, owing to them from one J. S., the defendant pleaded—(1°) That J. S. had been treasurer of the society, and there was a deficiency in his accounts amounting to 1,700*l.*, and the plaintiffs, after causing a warrant to be issued for his apprehension, agreed, instead of proceeding criminally against him, to accept 1,000*l.* in cash as part payment of such deficiency, and to take the defendant's bond for 1,400*l.* as security for 700*l.*, the remainder of such deficiency, and the bond in question was accepted by the plaintiffs in pursuance of the said illegal agreement, and for no other consideration (2°) That the bond was executed on condition that all prosecution of J. S. by the society, or by any of its members, should cease, but he was prosecuted by two of the members, and tried and acquitted of the several charges preferred against him.

On demurrer it was *held* by the Court of Exchequer, MARTIN, CHANNELL, and CLEASBY, BB. (*dubitante* MARTIN, B., as to first plea), that the pleas were good, in answer to the action on the bond, as showing an illegal agreement to stifle a prosecution: *Cannon v. Rands*; 23 L. T. Rep. (N. S.) 817, Ex.

BOND, Form of, in which Officers are to be bound, is given in Schedule to Acts 10 Geo. 4, c. 56, and 37 & 38 Vict. c. 42. See OFFICERS.

### BONUS.

16. *In the absence of any rule to the contrary, borrowers and investors are alike entitled to share in profits.*—In *Fleming v. Self*, (1854, 3 De G. M. & G. 997; 24 L. J. 29, Ch.; 1 Jur. (N.S.) 25), and in *Smith v. Pilkington* (1859, 1 De G. F. & J. 120; 29 L. J. 227, Ch.), a borrower redeeming was held entitled to be credited with the amount of bonus payable at the time to withdrawing members.

His Honour (Sir W. P. WOOD) stated various calculations to show that the mode adopted of finding profits would lead to total insolvency, and read passages from *Scratchley on Building Societies*, showing that the only way of ascertaining profits was by an annual account of debts and liabilities, receipts and payments; and then said he arrived at last at the conclusion that the society would not be bound by the resolution of the directors that eleven years should be the time at which the society was to terminate: 23 L. T. 63, 1 Kay, 519.

In forgetfulness of this decision, the trustees of a building society declared a bonus on the unadvanced shares only; but a borrowing member was held entitled to such bonus, notwithstanding that it had been erroneously calculated: *Archer v. Harrison*, 1857; 7 De G. M. & G. 404.

## BORROWING BY SOCIETY.

17. *Deposits with secretary.—Supposed unknown to directors.—Their liability.—Distinction between liability of directors and that of society.*—By the certified Rules of an Unincorporated Building Society the directors might borrow money not exceeding a prescribed amount.

Loans were made to the Society through its Secretary in accordance with advertisements, issued with authority of the directors, that such loans might be so made by bringing the money to the office of the Secretary.

In each case a receipt was given by the Secretary for the money as a loan to the Society, with a written undertaking by him, "to procure the promissory note of the directors for the loan," and afterwards, in pursuance of such undertaking the receipt was exchanged for such note, which always bore the date of the receipt.

After an amount had been so borrowed, exceeding the limit prescribed by the Rules, the plaintiffs, who had on several previous occasions lent money to the Society according to the above mode, paid a sum to the Secretary as a loan to the Society and received from him the usual receipt and undertaking, but no promissory note of the directors was ever afterwards given, and the Secretary absconded, appropriating that sum, with other moneys of the Society, to his own use.

In an Action against the Society and the directors, the jury found that the Society held out the Secretary to the plaintiffs as having authority to receive the loan on their behalf on the terms on which it was received, and that the directors did the same.

*Held*, that such finding was bad in point of law as against the Society, and that, as the limit of borrowing prescribed by the Rules had been exceeded when the loan was made by the plaintiffs, the Society, which had derived no benefit, was not liable for such loan.

*Held* (BRAMWELL, L. J., *dubitante*), that, although there was no fraud on the part of the directors, they were personally liable for the money which had been so received.

*Chapleo v. Brunswick Building Society*, 1881, Ct. of App. (BRAMWELL, BAGGALLAY, and BRETT, L. JJ.); L. R. 6 Q. B. Div. 696.

BUILDING SOCIETIES ACT, 1874. See ACTS.

### CALLS.

18. *Whether to satisfy creditors, or to adjust the claims of members inter se*, cannot be made under the Building Societies Act, 1874, as the liability of both unadvanced and advanced shareholders is limited. 37 & 38 Vict. c. 42, s. 14. The borrowers might, however, under this section, be required to contribute to the losses, if the rules so provide.

### CERTIFICATE OF INCORPORATION.

19. *Under the Building Societies' Act, 1874.—Effect of.*—A society becomes a body corporate by its registered name, having perpetual succession (until terminated or dissolved) and a common seal. 37 & 38 Vict. c. 42, s. 9.

20. *Must be appended to the rules.* 37 & 38 Vict. c. 42, s. 17.

21. *May be granted to any existing society*, the rules of which have been certified under 6 & 7 Will. 4, c. 32, and thereupon its rules, so far as they are not contrary to any express provisions of the Building Societies' Act, 1874, are to continue in force until altered or rescinded. But before a society will be entitled to a certificate, a proper application must be made for

the transcript of its rules to be taken off the file kept by the clerk of the peace, and to be transmitted to the registrar; or, failing such transmission by the clerk of the peace, the society must furnish the registrar with a copy of its rules, authenticated by the statutory declaration of the secretary or other officer of the society, as the registrar may require. 37 & 38 Vict. c. 42, ss. 10, 11.

22. *An application for a certificate by an existing society* must be made to the registrar by authority of a general meeting specially called for the purpose; and the registrar may require a statutory declaration that such authority was duly given. 37 & 38 Vict. c. 42, s. 12. For forms of application and declaration, see the Regulations, *post*.

23. *Proof of the registrar's signature to a certificate* is not required in the absence of evidence to the contrary, and the certificate is to be received by the court, and by all courts of law and equity and elsewhere, without such proof. 37 & 38 Vict. c. 42, s. 20.

24. *On incorporation, property vests without conveyance.*—All rights of action and other rights, and all estates and interests in real and personal estate whatsoever, belonging to or held in trust for a society certified under 6 & 7 Will. 4, c. 32, on incorporation of the society vest in it without conveyance or assignment. The case of stocks and securities in the public funds, and copyhold or customary estates alone excepted. 37 & 38 Vict. c. 42, s. 27.

COMMITTEE. See DIRECTORS, OFFICERS.

COMPULSORY SALE, Assignees affected by. See ASSIGNMENT.

„ Rule for, should not be too burdensome. See REDEMPTION.

COMPULSORY SALE, Whole amount to be immediately "due and payable on." See REDEMPTION.

### CONSOLIDATION.

25. *Consolidation of mortgages.—Joint mortgagors.—Foreclosure.—Default upon one mortgage only.*—A Building Society had taken two mortgages, dated respectively the 12th May, 1871, and the 21st Nov., 1874, for distinct debts which were to be repaid by monthly instalments extending over a period of twelve years. The mortgagor had become bankrupt, and as to the mortgage of 1874 default had been made. The mortgage of 1871 had passed into the hands of a bank, who had paid all the monthly instalments already due, and had offered to compound the instalments still to fall due by an immediate payment.

On a special case, HALL, V.-C., had made a declaration that the building society was entitled to resist the redemption of the bank's mortgage alone, and had a right to consolidate and foreclose the two mortgages.

(i.) Held (*reversing the decision of HALL, V.-C.*), that the doctrine of Consolidation could not be applied to a case where there had been no Default with respect to one of the two existing securities.

(ii.) A Mortgagee of two properties from the same Mortgagor is not entitled to Consolidate his securities *unless* there has been default as to both.

*Cummins v. Fletcher*, June, 1880, Ct. of App., (JAMES, COTTON, and THESIGER, L. JJ.); L. R. 14 Ch. Div. 699; 42 L. T. (N.S.) 859; 49 L. J. 117, Ch.; 28 W. R. 772.



26. In *Jennings v. Jordan*, Aug., 1881 (L. R. 6 App. Cas. 698 ; 45 L. T. (N.S.) 593), the House of Lords held that where a mortgage on one property is not created till after the Equity of Redemption in another property, subject to a mortgage thereon, has been parted with, the purchaser, seeking to redeem, is not subject to any equity arising from the acts done by his Vendor, subsequently to the sale, and there is, against him, no equity to consolidate the two Mortgages.

27. See *Section 17 of the Conveyancing Act, 1881*, which has special provisions on the point as follows:—

- (1.) Mortgagor shall be entitled to redeem one Mortgage without paying off any separate Mortgage made by him or any person through whom he claims on other property.
- (2.) Provided no contrary intention be expressed in Mortgage deeds or *one of them*.
- (3.) This section applies only where the Mortgages or *one of them* is made after the commencement of Act (1st Jan. 1882). (Conveyancing &c. Act, 1881, sect. 17).

### COPYHOLDS.

28. Advances may be made to members out of the funds of a society upon the security of copyhold, as well as of freehold or leasehold, estate. 37 & 38 Vict. c. 42, s. 18.

29. *Trustees may be appointed to be tenants in respect of copyholds.* See TRUSTEES. Or the lord may admit the society itself as tenant on payment of special fine. 37 & 38 Vict. c. 42, s. 28.

COSTS, Mortgagee entitled to, in a redemption suit,  
See REDEMPTION.

„ Taxation of. See REDEMPTION.

## COUNTY COURT.

30. *Equitable jurisdiction.—Mortgage up to 500l.—*The County Court Equitable Jurisdiction Act, 1865, 28 & 29 Vict. c. 29 (clause 3 of section 1) confers upon the county courts “all the power and authority of the Court of Chancery in all suits for foreclosure and redemption, where the mortgage shall not exceed in amount the sum of 500l. ;” and no subsequent Act has interfered with this part of the equitable jurisdiction of the county courts: *Powell v. Roberts*, before STUART, V.-C. ; 18 W. R. 84.

See also COURT.

## COURT.

31. *Definition of, under the Building Societies Act, 1874.*

The court means :—

In *England*, the county court of the district, in *Scotland*, the sheriff's court of the county, in which the chief office or place of meeting for the business of the society is situate ; and in *Ireland*, the civil bill court within the jurisdiction of which such office or place of meeting is situate. 37 & 38 Vict. c. 42, s. 4.

See also COUNTY COURT, DISPUTES.

COVENANT, Action for breach of. See ACTION.

„ Affirmative. See REPAIRS.

„ Mortgagor bound by. See MORTGAGE, REDEMPTION.

„ to pay beyond proceeds of sale. See REDEMPTION.

„ to have exclusive right of supplying beer. See RESTRAINT OF TRADE.

CRIMINAL PROCEEDINGS, Bond given to stay.

See BOND. See also EMBEZZLEMENT.

CUSTODY of Deeds. See DEEDS.  
,, of Seal. See SEAL.

## DATE.

32. *Of a deed, under which a claim is made, must be disclosed.*—In a suit for forfeiture, in which a building society, who claimed in respect of certain leaseholds that had been mortgaged to them, were the defendants, they did not in their answer set out the date of the lease, and the plaintiff excepted to the answer for insufficiency.

*Held*, by JAMES and MELLISH, L. JJ., (affirming the decision of MALINS, V.-C.,) that the rule of the court excusing a defendant from answering in cases of forfeiture did not apply, as the plaintiff was a trustee, and the society claimed to be his *cestuis que trustent*, and he, therefore, had a right to know under what title they claimed, and they must set out the date of the lease: *Hurst v. Hurst*, July, 1874; 31 L. T. Rep. (N.S.) 264.

## DEATH.

33. *Member or depositor dying intestate, having in society's funds a sum not exceeding 50l.*—In such case the amount due may be paid to the person who shall appear to the directors to be entitled under the statute of distributions to receive the same, without taking out letters of administration, upon the society receiving satisfactory evidence of death and a statutory declaration that the member or depositor died intestate, and that the person so claiming is entitled as aforesaid. 37 & 38 Vict. c. 42, s. 29.

34. *Such payment is valid and effectual with respect to any demand from any other person, as next of kin or as the lawful representative of such deceased member or depositor, against the funds of the society; but*

such next of kin or representative has his lawful remedy against the person who received the money. 37 & 38 Vict. c. 42, s. 29.

85. *Advanced shareholder dying intestate, leaving infant heir.*—Whenever a member, having executed a mortgage to a society, dies intestate, leaving an infant heir or infant co-heiress, the society may, after selling the mortgaged premises, pay to the deceased's administrator any money to the amount of 150*l.*, which shall remain after paying the amount due to the society and the costs and expenses of sale, without being required to pay the same into the Post Office Savings' Bank, as provided by the Trustees Relief Act and the amending Acts. The said sum of 150*l.* to be considered as personal estate, and liable to duty accordingly. 37 & 38 Vict. c. 42, s. 30.

## DEEDS.

86. *Provision for the custody of the mortgage deeds and other securities belonging to the society must be made in the rules.* 37 & 38 Vict. c. 42, s. 16.

*Auditors to inspect.* See ACCOUNTS.

See also DATE, MORTGAGE.

## DEFINITIONS.

87. The following definitions of a building society are given by the Act of 1874 :—

*A terminating society* is one which, by its rules, is to terminate at a fixed date, or when a result specified in its rules is attained ;

*A permanent society* is one which has not by its rules any such fixed date or specified result, at which it shall terminate. 37 & 38 Vict. c. 42, s. 5.

DEFINITION of COURT. See COURT.

„ REGISTRAR. See REGISTRAR.

DEPOSIT BOOKS must contain sects. 14 & 15 of 37 & 38 Vict. c. 42. See POWER TO BORROW.

DEPOSITORS, How far affected by Rules. See POWER TO BORROW.

„ Entitled to copy of Accounts. See ACCOUNTS.

DEPOSITS may be received to a limited extent. See POWER TO BORROW.

### DIRECTORS.

38. *The manner of appointing, remunerating, and removing* the board of directors or committee of management, as well as their powers and duties, are to be set forth in the rules, by which they are to be bound. 37 & 38 Vict. c. 42, ss. 16, 21.

39. They may require all officers, having the receipt or charge of money, to account (sect. 24), and they have the general management of the society.

40. *Personal liability of.*—If the loans or deposits received are in excess of the limits prescribed by the Act, the directors or committee of management of the society, receiving such loans or deposits on its behalf, are personally liable. 37 & 38 Vict. c. 42, s. 43.

DISCOUNT, no Restriction as to, under 37 & 38 Vict. c. 42. See PAID-UP SHARES.

### DISPUTES.

41. All disputes, whether between the society and any of its members, or any person claiming by or

through any member, or under the rules, are to be determined either by arbitrators, or by the registrar, or by the court, and such determination is to be binding and conclusive on all parties, and final to all intents and purposes, and not subject to appeal, nor removable to any court of law, nor restrainable by the injunction of any court of equity; but a case may be stated for the opinion of the supreme court of judicature on any question of law. 37 & 38 Vict. c. 42, ss. 16 and 84—86.

42. *The rules must set forth* whether disputes shall be settled by reference to the court, or to the registrar, or to arbitration. 37 & 38 Vict. c. 42, s. 16.

43. *Determination of disputes by arbitration.*—Where the rules of a society direct disputes to be referred to arbitration, arbitrators shall be named and elected in the manner such rules provide, or if there be no such provision, at the first general meeting. 37 & 38 Vict. c. 42, s. 34.

If elected at some subsequent meeting, the election would still be valid,—for this part of the provision is directory, and not imperative, as it contains “mere matter of direction, and nothing more:” TAUNTON, J., in *Pearse v. Morrice*, 1834, 2 A. & E. 96.

“There is a known distinction between circumstances which are of the essence of a thing required to be done by an Act of parliament and clauses merely directory. The precise time in many cases is not of the essence:” Lord MANSFIELD, in *Rex v. Lowdale*, 1758. 1 Bur. 447.

The 54 Geo. 3, c. 84, enacted that the Michaelmas quarter sessions shall be holden in the week next after the 11th of October. Held that this was directory, and that they might legally be holden at another time: *The King v. Leicester*, 7 B. & C. 6.

By a local Act constituting a dock company, it was enacted, that the minutes of the proceedings of the meetings of the directors should be signed by the chairman at each respective meeting. Held, that signature at a subsequent meeting after the minutes had been read and confirmed, was a sufficient compliance: *Southampton Dock Company v. Richards*, 1 Scott N. R. 219, 1840; *London and Brighton Railway Company v. Fairclough*, 5 Scott

N. R. 68, 1841; *West London Railway Company v. Bernard*, 3 Q. B. 873, 1843; *Miles v. Bough*, 3 Q. B. 845, 1843; "Dwarris on Statutes," 2nd ed. 1848, p. 606, *et seq.*

44. None of the said arbitrators may be *beneficially interested*, directly or indirectly, in the society's funds.

A certain number of them, not less than three, shall be chosen by ballot in each case of dispute, the number and mode of ballot being determined by the rules.

Their award determines the dispute, and compliance with the same may, if necessary, be enforced by the court upon the petition of any person concerned. 37 & 38 Vict. c. 42, s. 34.

45. *Notice of an appointment by arbitrators* for the purpose of proceeding with a reference, must be properly served, and not merely addressed to the member, by post, according to the last entry on the register: *Hilton v. Hill*, 1863; 9 L. T. (N. S.) 883.

46. The arbitrators may decline to hear counsel: *In re Macqueen*, 1861; 9 C. B. (N. S.) 793.

47. *Arbitrators dying, or refusing or neglecting to act.*—The society at a general meeting is to name and elect an arbitrator to act in the place of the one dying, or refusing or neglecting to act. 37 & 38 Vict. c. 42, s. 34.

48. *Registrar may determine dispute* where the parties to the same agree to refer it to him, or where the rules direct disputes to be so referred; and his award has the same effect as that of arbitrators. 37 & 38 Vict. c. 42, s. 34.

49. *Court may determine disputes.*—

(i.) If application has been made by either party to the other to have the dispute settled by

arbitration, and such application has not within forty days been complied with ;

- (ii.) If the arbitrators have refused, or, for a period of twenty-one days, have neglected, to make any award ;
- (iii.) Where the rules direct disputes to be referred to the court or to justices. 37 & 38 Vict. c. 42, s. 35.

50. *The effect of directing disputes to be referred to arbitration* is to oust the jurisdiction of the ordinary tribunals in such cases, and to preclude either party to the dispute from having recourse to an action at law instead.

“ It is, undoubtedly, true that the jurisdiction of the superior courts of Westminster is not to be ousted, except by express words, or by necessary implication (*Cates v. Knight*, 1789, 3 T. R. 442) ; yet where the object and intent of the statute manifestly require it, words that appear to be permissive only, shall be construed as obligatory, and shall have the effect of ousting the courts of their jurisdiction. As in *Cates v. Knight*, where a clause enacted, that it shall and may be lawful for the justice of the peace to hear and determine offences against the Act, that subject the offender to penalties not amounting to fifty pounds, with a power to the justices to mitigate the penalties, whilst the same Act directed that all penalties which amount to fifty pounds or more shall be sued for in His Majesty’s courts at Westminster ; it was held, that by necessary implication the courts above were ousted of their jurisdiction in the case of penalties not amounting to fifty pounds. Now, in this case the legislature has enacted, that disputes of the description of the present shall be referred—words which in their natural force denote an obligation, not a permission only ; and unless these words are construed to be compulsory on the plaintiff, they mean nothing. If they are not compulsory on the plaintiff, neither can they be so upon any principle of fair construction upon the defendant. And if recourse to arbitration is not intended, except both parties choose to adopt it, then, indeed, the Act is made a dead letter, for it would be competent for both parties to refer the dispute to arbitration, if they both agreed upon it, without the intervention of the statute. In order, therefore, to give these words of the statute any force or operation, the word “ shall ” must be construed as obligatory ; that is, that the matter in dispute shall of necessity be referred to



arbitration, and not be determined in any of the courts of Westminster Hall. But, looking at the object and intention of the Legislature, we think it clear that their remedy by action is taken away, and that by arbitration substituted in its place:" Per TINDAL, C. J., in *Crisp v. Bunbury*, 1832, 8 Bing. 394.

"Upon a rule for a *mandamus* to the judge of the county court to proceed with this action, which was brought by a member of a building society, within the provisions of the 6 & 7 Will. 4, c. 32, against an officer of the society, it was contended, that by sect. 4 of that statute, incorporating the provisions of 10 Geo. 4, c. 56, ss. 27, 28, 29, and by the 25th rule of the society, directing a reference of all disputes to justices of the peace, the right to bring the action was taken away; and I am of opinion that this is so. By those sections, provision is directed to be made by the rules, specifying whether disputes shall be referred to justices or to arbitration; and the decision upon such reference is made final. Those sections and this rule, providing for a cheap, simple, and speedy decision, oust the jurisdiction of the ordinary tribunals (*Crisp v. Bunbury* [see above], *Timms v. Williams*, 1842, 3 Q. B. 413). In *Cutbill v. Kingdom*, 1847, 1 Ex. 494, the action was held maintainable, because the rule there relating to reference did not comprise the matter of that action; but by the exception the rule was recognized. The 9 & 10 Vict. c. 95, s. 58, does not operate to take away the effect of these statutes from county courts, or revive a power of bringing actions there, which had been taken away from all courts generally. The rule must, therefore, be discharged": ERLE, J., in *Ex parte Payne*, 5 Dowl. & L. 679, 1849; 18 L. J. 197, Q. B.; 13 Jur. 634.

51. The view taken in the above cases of *Crisp v. Bunbury* and *Ex parte Payne* was followed by BACON, V. C., in the case of *Thompson v. Planet Building Society*, where the plaintiff sought to compel immediate payment of the sums subscribed by him in respect of his shares, claiming a right to withdraw under notice properly given; and also to restrain the directors from applying the funds of the society in paying other persons in priority to himself, and to make the directors personally liable, and the Vice-Chancellor held that it was contrary to the language of the statute (a), and

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(a) The Acts 10 Geo. 4, c. 56, s. 27, and 4 & 5 Will 4, c. 40, s. 7, incorporated with 6 & 7 Will. 4, c. 32. The provisions of 37 & 38 Vict. c. 42, leave even less room for doubt. See the decision of JESSEL, M. R., in *Wright v. Monarch Building Society*, p. 122, *post*.

against the policy of the law, that internal disputes between the members, or office-holders, of a building society, and the society should be the subject of actions at law or suits in equity.

His honour, in giving judgment, said it was a most important case, for benefit building societies were scattered over the face of the country, and were he to decide in favour of the bill, he would be opening the flood-gates of litigation and deciding directly against the words and policy as expressed in the words of the Act of parliament. The members of these societies were presumably poor, and the object of the legislature was to provide a cheap mode of settling the differences between them, and to prevent their funds from being eaten up by litigation. He did, however, feel pressed by the conflict of authority, the Master of the Rolls having in two cases decided contrary to the other judges. But great as his respect for that learned judge was, when he found a majority of authorities opposed, he felt himself bound to follow that majority, and to refuse to open the door of this court to any such litigation. (1873, L. R. 15 Eq. 333.)

52. In a case arising in a society under 6 & 7 Will. 4, c. 32 (*Huckle v. Wilson*, June, 1877, L. R. 2 C. P. D. 410), DENMAN, J., confirmed a decision of HUDDLESTON, B., that a statement of claim alleging a dispute between a society and a member who had given notice to withdraw was bad in law, and that the dispute ought to be referred to arbitration.

53. A judgment upon the construction of the Building Societies Act, 1874, in regard to the settlement of disputes, was given by the Master of the Rolls in March, 1877, in the case of *Wright v. The Monarch Investment Building Society* (L. R. 5 Ch. D. 796). The decision is upon a point not yet free from doubt, and affects disputes referred to the registrar either by consent or by the rules of a society, as well as to those referred to arbitration. Plaintiff alleged that he was a borrowing member, and being desirous of selling his mortgaged property, had applied to the society for an account of the amount due to them, which, being furnished at the time for the completion of the sale, he, in order to make a title to

the purchaser, paid it under protest without having time to investigate its accuracy, and claimed relief accordingly. The society moved that all proceedings in the action might be stayed in order that the matters in question might be referred to arbitration pursuant to the rules of the society. In granting the application, JESSEL, M. R., said, "I say nothing of the hardship that would ensue if actions of this kind could be maintained. This action is for an account. The account may be more or less complicated, still the action is merely for an account against a mortgagee, and the plaintiff has executed certain deeds in which he has bound himself to observe the rules of the society. The rules of the society say that disputes are to be referred to arbitration, and I think this brings the case under section 11 of the Common Law Procedure Act, 1854. I think, also, that under the Building Societies Act, 1874, these matters must be referred. Section 21 of that Act says that the rules of a society shall be binding on the several members and officers of the society, and on all persons claiming on account of a member or under the rules, all of whom shall be deemed and taken to have full notice thereof; and section 34 provides that where the rules of a society direct disputes to be referred to arbitration, the award of the arbitrators shall determine the dispute. The rules of this society provide that all disputes between members shall be referred to arbitration, and I think, in these circumstances, the jurisdiction of the court is ousted. I cannot accede to the argument that the Act of 1874 must be construed, by analogy, with the decisions on the old Acts, or the provisions of the Friendly Societies Act. The words of the Building Societies Act, 1874, are in themselves sufficiently clear, and I must give effect to them without reference to anything else. The order will be that the matters in dispute be referred to arbitration, pursuant to the rules of the society, the costs of the action and of the reference to be in the discretion of the arbitrators." The effect of this decision

will appear when it is stated that under the Benefit Building Societies Act of 1836 it had been held that the jurisdiction of courts of law was not ousted when the dispute involved the relation of mortgagor and mortgagee between the member and the society. See *Fleming v. Self*, 3 D. M. & G. 997 ; 24 L. J. 29, Ch. ; 1 Jur. (N. S.) 25 ; *Smith v. Lloyd*, 26 Beav. 507 ; *Doubleday v. Hosking*, L. R. 15 Eq. 844 n.

### DISSOLUTION.

54. *Under the Building Societies Act, 1874*, four methods are provided in which a society may terminate or be dissolved :—

- (i.) Upon the happening of any event declared by its rules to be the termination of the society ;
- (ii.) By *dissolution* in manner prescribed by its rules ;
- (iii.) By *dissolution* with the consent of three-fourths of the members, holding not less than two-thirds of the shares ;
- (iv.) By *winding-up*, either—
  - (a.) Voluntarily under the supervision of the court, or
  - (b.) By the court, if it shall so order, on the petition of any member authorized by three-fourths of the members present at a general meeting specially called for the purpose ; or on the petition of any judgment creditor for not less than 50*l.*, but not otherwise. 37 & 38 Vict. c. 42, s. 82.

55. *The instrument of dissolution* and all alterations therein, must be registered, and are binding upon a the members. It is to set forth—

- (a.) The liabilities and assets in detail ;
- (b.) The number of members, and the amount to their credit in the books ;

- (c.) The claims of depositors and other creditors, and provision for their payment ;
- (d.) The intended appropriation or division of the society's funds and property ;
- (e.) The names of one or more persons to be appointed trustees for the special purpose, and their remuneration. 37 & 38 Vict. c. 42, s. 32.

56. *Notice* of the commencement and termination of every dissolution or winding-up is to be sent to the registrar. 37 & 38 Vict. c. 42, s. 32.

### EMBEZZLEMENT.

57. *Secretary can be indicted for.*—The secretary of a building society has been *held* to be a servant who can be charged as such in an indictment for embezzlement of moneys belonging to the society: *Reg. v. Redford*, 1869 ; 11 Cox C. C. 367, Cr. C. Res. ; 21 L. T. Rep. (N. S.) 508. His position is different from that of the treasurer of a friendly society formed under 18 & 19 Vict. c. 63. It has been decided that the treasurer of a friendly society into whose hands the moneys received on behalf of the society were to be paid, and who was to pay no money except by an order signed by the secretary and countersigned by the chairman or a trustee, and who by the statute was bound to render an account to the trustees, and to pay over the balance on such accounting when required, is *not a clerk or servant*, and cannot be indicted for embezzlement of such balance: *Reg. v. Tyrie*, 1869 ; 11 Cox C. C. 241 Cr. C. Res. ; 1 L. R. (C. C.) 177.

BOVILL, C. J., in delivering judgment in *Reg. v. Tyrie*, said : —“ There is no case of a treasurer being indicted for embezzlement. The essence of the crime of embezzlement consists in the relation of clerk or servant. It is true that the funds of these (friendly) societies are vested in the trustees and that the treasurer is bound to account to them when required to do so, but that does not make the treasurer the servant of the trustees ; he is an accountable officer, but not a servant or clerk.”

## EQUITY OF REDEMPTION.

58. One of the most valuable provisions of the Building Societies Acts,—that of section 5 of the original Benefit Building Societies Act of 1836, (6 & 7 Will. 4, c. 82), re-enacted by section 42 of the Building Societies Act, 1874, and adopted in section 16 (7) of the Friendly Societies Act, 1875, and section 12 (8) of the Industrial and Provident Societies Act, 1876, by which a mere receipt endorsed on a mortgage vacates it, and vests the legal estate in the person for the time being entitled to the equity of redemption,—has recently received judicial interpretation from the Master of the Rolls, in the case of the *Fourth City Mutual Building Society v. Williams*, (L. R. 14 Ch. D. 140). The facts present some complexity, in consequence of the outrageous frauds committed by the mortgagor, but may be briefly stated as follows: A member of the Liberator Building Society mortgaged property to it, and subsequently borrowed money from a private person on the same security, with which he paid off the Liberator Building Society, receiving back the deed with the statutory endorsement. He afterwards paid off the mortgage, taking a re-conveyance from C., and then again mortgaged the property to G., by whom the mortgage was transferred to the defendant. Meanwhile he had prepared a forged deed, and offered it as security to the plaintiff society, without notice to them of any other encumbrance whatever. The plaintiff society asked for a declaration that the legal estate was vested in them under the statutory receipt endorsed by the Liberator Building Society on the first mortgage, and contended that they were the persons entitled to the equity of redemption. The Master of the Rolls decided against them, on the ground that it was quite clear that when the receipt was given the second mortgagee was the person entitled to call for the legal estate, and that his rights in that respect were now in the defendant, whom he declared to be the person entitled to the

equity of redemption within the meaning of the Act. The grounds of the decision were stated as follows:—

“ If there were successive mortgages, each one framed on a conveyance, with a proviso for redemption, the owner of the equity of redemption is that one of the several owners who is entitled to call for a conveyance. Where the ownership is split up by successive mortgages, the mortgagee of the equity of redemption is the real owner of the equity of redemption, subject to redemption. The section says the society may re-convey to the then owner of the equity of redemption, or to such persons, and to such uses, as he may direct. Does not that assume that he has a command of the estate? that he has a right to direct the conveyance? Therefore, when you come to see to whom the mortgaged property is to be conveyed, you have a guide to the interpretation of the section as to the person or persons in whom it is to vest without re-conveyance. I do not think any lawyer would say that the re-conveyance authorized by the Act is authorized to be made to anybody but the person who is at law entitled to call for it. But there is an alternative mode of proceeding. Instead of a re-conveyance to the then owner of the equity of redemption, the society may endorse a receipt, and then that receipt is to vacate the mortgage and vest the estate in the property in the person for the time being entitled to the equity of redemption. Surely this is the same person as the owner of the equity of redemption in the former part of the section. They are equivalent words: the re-conveyance is not to be to one person, and the vesting to be in another; they are alternative modes of getting the legal estate into the same person. This is, in my opinion, the meaning of the Act, and, consequently, I have here to ascertain who was the person to whom the Liberator Society, on being paid off, ought to have conveyed under the first part of the section, and that is the person in whom the legal estate vested under the second part of the section. This, in my opinion, makes the

whole thing sensible, and in fact renders the case quite free from any real difficulty, beyond the inseparable difficulties which attend all dealings with real estate, subject to the complicated law of this country relating to real estate."

This decision shows the advantage a society possesses in being able, by a mere receipt, to discharge itself from all responsibility of inquiring to whom the legal estate ought to be conveyed (a).

ESTABLISHMENT of Societies. See PURPOSE, RULES.

## ESTOPPEL.

59. *Mortgage of freeholds—Subsequent legal estate—Grant without recitals—Covenants—Relative effect.*—The following case is of interest, as containing a very minute judicial exposition of the interpretation or effect of the *covenants* in a mortgage. The subject actually under consideration was *estoppel*, as follows:—

- (i.) A., by deed without recitals, purported to grant certain freehold property to the plaintiffs by way of mortgage.

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(a) The circumstance that the plaintiffs happened to be a building society, though not the society by which the receipt had been given, seems to have led the Master of the Rolls to make the following remarks, with which he commenced his judgment: "Of course, the persons who framed the Act, and copied into it sections from previous Acts, had no precise idea as to what an equity of redemption meant. They, no doubt, thought it was very easy to find out, but it is not very easy to find out at all." As the enactment is one in the interest of mortgagees, and avails to relieve them from the necessity of enquiring where the equity of redemption is, it would seem that the "persons who framed" it can hardly have done so, because they thought that "was very easy to find out." If they could have anticipated the necessity for the perspicuous judgment of the Master of the Rolls, they might have been pardoned for thinking it not always very difficult; but, difficult or easy, all they did was to relieve societies from any duty of inquiry. The remarks on this decision are extracted from the Report of the Chief Registrar of Friendly Societies.



The deed contained the usual mortgagor's covenants for title, including a covenant that the mortgagor "had power to grant the premises in manner aforesaid."

Two forged deeds showing a title in A. were produced, and handed by A. to the plaintiffs, but at the date of the mortgage he had not the legal estate, or any interest whatever in the property.

Subsequently, however, A. acquired the legal estate, and immediately afterwards mortgaged the property to the defendants.

*Held*, that as the mortgage to the plaintiffs contained no precise averment that A. was seised of the legal estate, there was no estoppel, and that the defendant's mortgage was entitled to priority.

(ii.) A special case had been stated for the opinion of the court under Order XXXIV., r. I.

(a.) Whether the defendants were entitled to the property in priority to the plaintiffs in respect of the moneys due and secured by virtue of the mortgage of the 20th May, 1873.

(b.) Whether the defendants were bound to deliver up possession of the property and title deeds to the plaintiffs.

(iii.) The point was as to an estoppel being "fed" by the subsequent acquisition of the legal estate, and was raised in favour of mortgagees who had been defrauded by the production of forged title deeds, and who hoped to acquire the estate by Estoppel.

The contention was that the "*grant*" contained in a mortgage of freeholds, coupled with the usual covenants, was sufficient to create an Estoppel as against the mortgagor, so as to pass to the mortgagees the legal estate subsequently acquired by the mortgagor.

The defendants were second mortgagees in point of time, and they lent Downs, the mortgagor, money to enable him to purchase property, which had been conveyed to the first mortgagees by Downs, who, however, at that time had no title to the property whatever. The arrangement with the defendants was to be carried out by a conveyance to Downs, and by his subsequently mortgaging the property to them, and it was this momentary transfer of the legal estate to Downs which the plaintiffs contended fed the estoppel created by the mortgage to them.

(iv.) A similar contention in favour of purchasers for value was used in the well-known case of *Heath v. Crealock*, (L. R. 10 Ch. Div. 22; 31 L. T. (N.S.) 650), where Crealock had defrauded his co-trustee, the plaintiff. There CAIRNS, L. C., said, that the operative words in

an ordinary conveyance by grant created no Estoppel, but that the Estoppel, if any, must arise by reason of the Recital in the conveyance. In that case, however, the Court considered the recital too ambiguous to create an Estoppel.

- (v.) In the case of *Downs*, JESSEL, M. R., considered himself bound by *Heath v. Crealock* (*sup.*), with respect to the "covenant" relied on, "that the mortgagor had full power to grant and convey,"—he said that the mortgagor did *not* covenant that he had the legal estate.

In deciding against the plaintiffs, he said that, as the doctrine of Estoppel was only raised as against an innocent holder of the legal estate, he considered it one which he should not feel disposed to extend any further than the decisions carried it.

In giving his decision, JESSEL, M. R., observed :—

"A mortgagee should never allow the legal estate to get into his mortgagor's possession.

"However, the defendants did so, and the mortgage to them, being dated the same day as the conveyance to Downs, the result was that for a moment the legal estate was in Downs.

"The plaintiffs say that by reason of something in the mortgage to them, there was an Estoppel as against Downs, and the persons claiming under him, and that the Estoppel became filled or supplied by the momentary conveyance to Downs, which in other words 'fed' the Estoppel, and thereby vested the legal estate by Estoppel in the plaintiffs."

- (vi.) He then referred to *Heath v. Crealock* (*sup.*):—

"The first thing that case proves is that a grant, though it would amount in equity to a representation, does not amount in law to a representation that the man has a right to grant."

In that case the recital was that one Stephens was seised, or otherwise well and sufficiently entitled, to the property in question, free from incumbrances.

"If that recital had been a recital simply that Stephens was seised, there might have been an Estoppel, but the recital is one out of which no estoppel can arise, because it is not precise or unambiguous.

"It is a recital which, in substance, amounts to a statement that he had an estate either at law or in equity; and the fact that it states the estate, whatever it was, was *free from incumbrances* creates no estoppel for the purpose of making the legal estate pass.

"A representation that a man is entitled to an estate free

from all incumbrances, is not a representation that he has the legal estate."

(vii.) Returning to the case of Downs, he continued:—

"What then does this deed convey? It has no recital at all. It is a common Grant, which of course will not do; but the mortgagor covenants with the mortgagee in the usual way,—‘that the mortgagor has full power to grant and convey the said premises in manner aforesaid,’ and then there are other covenants which were not relied upon; for instance, that the mortgagee after default should quietly enjoy.

"Now it has been said that that covenant contains that precise statement which is necessary in order to support this kind of Estoppel.

"In the first place, I am of opinion that there is no such precise statement in the covenant.

"The mortgagor has power to convey even if the legal estate is outstanding in a Bare trustee. He can compel the trustee to come in and grant the estate, and in that way he really has the power to convey. He has power to call upon the trustee to convey to him, and also to convey ‘in manner aforesaid.’ He has power to convey if he has the whole beneficial interest.

"But there is another ground upon which the words of the covenant can be fully complied with without his having a single atom of Legal Estate.

"He only covenants that he has the power to convey, and therefore it might be that he might have power to appoint the Legal estate under the *Statute of Uses*, without having any legal estate at all, or he might have a power under a will which would enable him to convey by Bargain and Sale irrespective of the *Statute of Uses*.

"Therefore, the assertion that he has power to convey is not an assertion that he is seised in fee or that he has any legal estate whatever.

"There are other cases which can be put, which would undoubtedly comply with the words, even if there had been a recital instead of merely a covenant.

"It appears to me therefore that, having regard to the decision of the Court of Appeal, in *Heath v. Crealock* (*sup.*), there is not in this case that precise, clear, and unambiguous statement that Downs was seised in fee, or had the legal estate which is required by the law as settled by authority.

"There is one other observation which I have to make upon the case, which is, that I am not prepared to decide that a covenant will do at all.

- "As it was said in *Crofts v. Middleton* (2 K. & J. 194), you must look to the effect of the deed.
- "In the first place, no decided case has been produced in which it has been held that the covenant—that a man has a thing—shall be considered as equivalent to a positive statement that he has it, and therefore there is no authority in all the long line of cases which makes a covenant sufficient.
- "It has been attempted to argue this matter upon grounds of principle and analogy, which I am afraid have very little to do with this case; but if you were to adopt the principle of *Crofts v. Middleton* (*sup.*), namely, that you must look to the whole of the deed to see what its effect is, the result would simply be this,—the covenant is an agreement that if he has not the power to convey the legal estate, he will be liable in damages.
- "It is an agreement that he shall be treated as having it, and so be liable to an action if the statement turns out to be untrue, and that is what it means.
- "The covenant has no other meaning; it is not a mere assertion that he has the legal estate, but really an agreement that if he has it not, he will pay for it.
- "It is a bargain that he has the power to convey, but not an assertion that he has the estate; and in that way it does not appear to me to be at all clear that it would amount to that precise averment of a fact which is necessary in order to support the doctrine that a subsequent conveyance of the legal estate will, so to say, fill up the estoppel previously created.
- "I see no reason for extending the doctrine.
- "It can have no operation except in the case of third parties who are innocent of fraud, and who have become owners for value; and, there can be no reason, that I am aware of, for preferring one innocent purchaser for value to another.
- "As against the man himself, or persons claiming without value, the purchaser or the mortgagee can recover without any recourse to Estoppel at all, and therefore (considering especially that the jurisdiction in equity and common law is now vested in every Court of justice, so that no action for ejectment or, as it is now called, an action for the recovery of land, can be defeated for the want of the legal estate where the plaintiff has the title to the possession), I think I ought not to attempt in any way to extend this doctrine by which falsehood is made to have the effect of truth.
- "The Doctrine appears no longer necessary in law, and no longer useful, and in my opinion should not be carried further than a judge is obliged to carry it.

“ Under these circumstances I decide both questions put to me by the special case in favour of the defendants.”

*General Finance, etc., Co. v. Liberator Building Soc.*, 1878, JESSEL, M. R. ; L. R. 10 Ch. D. 15 ; 39 L. T. (N.S.) 600 ; 27 W. R. 210.

## FINES.

60. The fines and forfeitures to be imposed on members of a building society are *to be set forth in the rules*. 37 & 38 Vict. c. 42, s. 16.

61. *When, and when not, referable to arbitration.*—Non-fulfilment of the covenant in a mortgage deed for the payment of fines, is not a dispute referable to arbitration ; but fines accruing on unadvanced shares are subject to arbitration : *Cutbill v. Kingdom*, 1847 ; 1 Ex. 494 ; 17 L. J. 177, Ex. ; *Knox et al. v. Shepherd*, 1860 ; 2 L. T. (N. S.) 351, Q. B.

62. *What is a reasonable fine in a mortgage.*—The rules of a building society imposed fines for non-payment of the contributions on advanced shares at the rate of a shilling per pound per month.

ROMILLY, M. R. , *held* that the fines were reasonable within the meaning of the 1st section of 6 & 7 Will. 4, c. 32 (a), and were not within the doctrine of equitable relief against penalties ; that they did not carry interest ; and that a borrowing member could not redeem a mortgage to the society without paying the fines which he had incurred.

The Master of the Rolls, in giving judgment, said :—“ It is contended, on behalf of the plaintiff, that the fines for non-pay-

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(a) The Building Societies Act, 1836 (6 & 7 Will. 4, c. 32), provided that a general meeting might inflict reasonable fines upon members offending against the rules. The Act of 1874 merely directs that provision be made in the rules for the imposition of fines.

ment of monthly advance repayments are unreasonable and that they are in the nature of a forfeiture, and, therefore, illegal. It is, no doubt, a high rate of interest, but it is one imposed to enforce regularity of payment; and upon reflection and reconsideration, I see nothing unreasonable in it. It is a matter well understood between the contracting parties, and it is a contract which, in the absence of all fraud or undue pressure, the parties were perfectly competent to enter into. Neither do I see anything in the shape of forfeiture in the transaction. It is true that the court will not allow a person to contract to receive a given rate of interest, and to stipulate that, if not paid, the rate of interest shall be increased; but this has no resemblance to that case. . . . Since the repeal of the usury laws I see nothing illegal in the transaction, if there be no concealment and no undue pressure, and the parties perfectly understand and assent to the contract.

*Parker v. Butcher*, 1867; L. R., 3 Eq. 762.

The practice of benefit building societies, with respect to the imposition of fines on members in arrear of the repayments of advances, has more recently been discussed in the law courts in the case of *Lovejoy v. Mulkern*, before JESSEL, M. R., and on appeal before COLERIDGE, L. C. J., and JAMES and BAGGALLAY, L. JJ.

The plaintiff had borrowed 1,400*l.* of the society (which is not one incorporated under the Act of 1874) in November, 1868, upon the condition that repayments for five years, at 8*l.* 10*s.* a month, should commence in November, 1871, he paying in the meanwhile interest at 7½ per cent. per annum on the loan. On the 1st of November, 1871, however, the borrower having failed in payment of the interest, the society took possession of the property. Upon a reference to chambers for an account to be taken of what was due to the society, they claimed 4,687*l.*, of which 2,939*l.* was for fines. According to the rules and tables of the society, fines were chargeable of 6*d.* per month for each 50*l.* share, increasing to 5*s.* per share for six months' default; but no provision was made as to what fines should be payable where the default exceeded six months. The society founded their claim upon the assumption that the fines would increase in

the same manner after the six months as provided by the table for the first six months. The Master of the Rolls, however, held that no fines on any share were chargeable beyond the six months, and awarded the society 21*l.* 14*s.*, being 15*s.* 6*d.* per share for each of 14 shares. Upon appeal, their lordships varied this order by allowing a fine of 5*s.* for each repayment on a share in arrear, making 420*l.* In both courts, the proposition that the fines could be carried by inference beyond those expressly provided by the rule was rejected. This case illustrates the wisdom of the provision of the Act of 1874, requiring the rules of building societies to set forth "the fines and forfeitures to be imposed on members of the society," and will, it is to be hoped, lead societies to see that the fines so to be imposed are reasonable in amount. (37 L. T. Rep. (N. S.) 77; 46 L. J. 630, Ch.)

### FORECLOSURE.

63. *Under the Building Societies Act, 1874.*—A society, so far as is necessary for its legal purpose has power to hold land with the right of foreclosure. But any land so held is, as soon as may be conveniently practicable, to be sold or converted into money. 37 & 38 Vict. c. 42, s. 13.

See also MORTGAGE, REDEMPTION.

### FORFEITURE.

64. *Rule forfeiting unadvanced shares, in the event of non-payment of subscriptions, not unreasonable.*—The two directors of a building society in attendance on a subscription night, inadvertently received money on a share which had been forfeited in accordance with the rules for non-payment of subscriptions during a certain period. The board afterwards repudiated the receipt, and returned the money. By the rules five directors were a quorum.

*Held* (by CRESSWELL, WILLIAMS, and CROWDER, JJ.) that the forfeiture had not been waived, and that there was nothing unreasonable nor contrary to law in the rule in question: *Card v. Carr*, 1856; 1 C. B. (N. S.) 197; 26 L. J. 113, C. P.

### FORGERY.

65. *Forgery Act* (24 & 25 Vict. c. 98, s. 24)—*Written request to pay money without authority*.—A. deposited with a building society 460*l.* for two years at interest, through the prisoner, who was an agent of the society. The prisoner having obtained the deposit note from A. (who gave it up on receiving an accountable receipt for 500*l.*, being made up by the 460*l.* and interest) wrote, without authority, the following document: "Received of the S. L. Building Society the sum of 417*l.* 13*s.* on account of my share, No. 8071, pp. Susey, A., Wm. Kay," and obtained 417*l.* 13*s.* by means thereof and giving up the deposit note.

The jury having found that by the custom of the society such documents were created as an "authority to pay," and as a "warrant to pay," and as a "request to pay" money, the prisoner was convicted under the 24 & 25 Vict. c. 98, s. 24.

*Held* that the conviction was right: *Reg. v. Kay*, 11 Cox C. C. 529, Cr. C. Res.; L. R. 1 C. C. 257; 22 L. T. Rep. (N. S.) 557.

### FORMS.

66. Forms of conveyance, mortgage, transfer, agreement, bond, security for deposit or loan, or other instrument necessary for carrying the purposes of a building society into execution may be described in a schedule to its rules. 37 & 38 Vict. c. 42, s. 19.

67. *The Form of Bond* in which, if the society so direct, an officer having the receipt or charge of money



is to become bound, before taking upon himself the execution of his office, is set forth in the schedule to the Building Societies Act, 1874.

68. *The Form of Receipt* which may be endorsed on any mortgage or further charge, when all moneys intended to be thereby secured have been fully paid or discharged, is specified in the schedule to the Building Societies Act, 1874.

69. *The Form of Certificate*, to be given by the registrar, of incorporation, registration of alteration of rules, and registration of change of name, respectively, are contained in the schedule to the Building Societies Act, 1877.

70. Forms of application for certificate of incorporation and for registry of alterations of rules, and of statutory declarations relating thereto, are appended to the regulations made by the secretary of state under the Building Societies Act, 1874. See Appendix.

**FRAUD.** See **BOND**, **EMBEZZLEMENT**, **FORGERY**, **OFFICERS**, **PENALTIES**.

**FRIENDLY SOCIETIES ACTS** of 1829 and 1834, apply to benefit building societies, but not to incorporated societies. See **REPEALED ACTS**.

**FRIENDLY SOCIETY**, Treasurer of, not a clerk or servant. See **EMBEZZLEMENT**.

#### **INCORPORATION.—CANCELMENT OF.**

71. *Incorporation alleged to have been obtained improperly or fraudulently—Refusal of court to make any order—Proceedings for cancelment should be by “Quo warranto”—Queen’s Prerogative.*—**FRY, J.**, held that he had no power to order a certificate of incorporation to be cancelled as the incorporation of persons into

bodies corporate, is a prerogative of the crown, and the proceedings for cancelment should be by "*quo warranto*."

*Glover v. Giles*, April, 1881 ; L. R. 18 Ch. D. 173 ; 45 L. T. (N. S.) 344.

INFANT may be a member. See MINORS.

• INLAND REVENUE ACT, 1868, Stamp duty under.  
See REPEALED ACTS.

• INSTRUMENT of dissolution. See DISSOLUTION.

### INTEREST.

72. Under the *Building Societies Act*, 1874, there is no restriction as to interest to be paid on shares of whatever denomination, and it may or may not be accumulating. See 37 & 38 Vict. c. 42, s. 13.

INTESTACY of member or depositor. See DEATH.  
,, Of advanced member leaving infant heir.  
See DEATH.

### INVESTMENT OF FUNDS.

73. The funds of a society whether raised by the subscriptions of members on shares, or by deposits or loans, are to be applied in making advances to members upon security of freehold, copyhold, or leasehold estate, by way of mortgage. 37 & 38 Vict. c. 42, ss. 13, 15. But when any portion of the funds is not immediately required for the purposes of the society, it may be otherwise invested. See SURPLUS FUNDS.

74. The purposes to which the funds of a society are to be applied, and the manner in which they are to be invested are to be set forth in the rules. 37 & 38 Vict. c. 42, s. 16.

75. *Breach of trust by directors—Unauthorized loan of money to a finance company—Money still in the hands of the company borrowing.*—The directors of a building society deposited money, in a manner unauthorized by their rules, and contrary to the provisions of the Act (a), with a finance company, the manager of which was also manager of the building society. Afterwards the deposit was called in, and the directors of the finance company gave a cheque for the amount to the manager, to be paid by him to the building society. He appropriated it to his own use. A bill was then filed by the trustees of the building society to recover the money from the finance company.

The court (JAMES and MELLISH, L. JJ.) held (reversing the decision of ROMILLY, M. R., L. R. 12 Eq. 386), that the manager held the money as agent for the finance company until he should pay it to some person competent to give a receipt on behalf of the building society; and that as he never paid it over, the money must be taken to be still in the hands of the finance company, who were liable to repay it to the building society.

*Held*, also, that as it was trust money, a suit to recover it was maintainable; and the finance company were accordingly ordered to repay the money, with interest.

JAMES, L. J., in delivering judgment, said:—"It appears beyond all doubt that this money was money belonging to the building society, and that it was not in accordance with the Act of parliament or their rules that it should be lent to or deposited with the finance company: It was, therefore, trust money, placed by an improper act of the directors of the building society in the hands of the defendants, and as they have never discharged themselves from it, it is trust money still in their hands. It is, therefore, in my opinion, open to the plaintiffs,

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(a) The Act 10 Geo. 4, c. 56, s. 13, incorporated with 6 & 7 Will. 4, c. 32. Such an investment would be equally contrary to the provisions of 37 & 38 Vict. c. 42. See *infra* SURPLUS FUNDS.

finding this trust money in the hands of the defendants, to call upon them to pay it back."

MELLISH, L. J., said:—"I am of the same opinion. The Master of the Rolls decided the case on the ground that this was a mere money demand; but looking at the Act of parliament and the rules of the society, it appears to me clear that the directors were guilty of a breach of trust in depositing this money with the defendants. If the money was to be permanently invested, the directors were bound by the Act to invest it in certain securities only; and if it was money kept for immediate use, it was contrary to their rules to deposit it in any bank except the City Bank."

*Hardy v. Metropolitan Land and Finance Company*, 1872; L. R. 7 Ch. App. 427.

76. *Loan on personal security—Alleged illegal contract—Right of society to sue on the contract—Friendly Societies Act, 1875, s. 16.—*

*Held*, that a loan by the trustees of a society upon a promissory note or other "personal security," which is not an investment authorized by the Act, is a mere breach of trust, and the personal security given for the money lent is not an illegal contract upon which trustees cannot bring an action.

*Re Coltman; Coltman v. Coltman*, Nov. 1881, Ct. of App. (JESSEL, M. R., BRETT and LINDLEY, L. JJ.); 45 L. T. (N. S.) 392, (FRY, J., reversed).

## JOINT BORROWERS.

77. *Two members jointly borrowing from a building society—Transfer of shares by one.—*

*Held*, by MANISTY, J., that he was not after transfer liable under covenant, executed by both, in mortgage deed to pay all subscriptions, fines, and other payments according to the rules and the deed.

*Ingledeu v. Temple*, January, 1881; 70 L. T. (N. S.) 263.

## JOINT MEMBERSHIP.

78. *Two or more persons may jointly hold a share or shares in a building society; and all shares held jointly in any society subsisting at November 2nd, 1874, shall be deemed to be lawfully so held, unless such holding is prohibited by the rules.* 37 & 38 Vict. c. 42, s. 39.

## JURISDICTION.

79. *Of superior courts of law and equity is ousted by 37 & 38 Vict. c. 42, s. 36, in the case of disputes. (See DISPUTES). But a case may be stated for the opinion of the Supreme Court of Judicature on any question of law.* 37 & 38 Vict. c. 42, s. 36.

80. But in questions involving the relation of *mortgagee* and *mortgagor* between the society and the member, the courts of law and equity have jurisdiction. See DISPUTES.

See also ACTION, APPEAL.

## LAND.

81. *Building Societies have no power to purchase land for general purposes, but only for the purpose of erecting thereon a building for conducting the business of the society (37 & 38 Vict. c. 42, s. 37); the surplus funds, however, where authorized by the rules, may be invested upon land.* See SURPLUS FUNDS.

82. *Land illegally purchased.*—An illegal purchase of land, by members on behalf of the society, is an individual speculation of the persons purchasing, and any loss incurred thereby must be borne by them:

*Re Kent Benefit Building Society*, 1861 ; 1 Dr. & Sm. 417 ; 30 L. J. 785, Ch. ; 4 L. T. (N. S.) 610 ; 7 Jur. (N. S.) 1045.

83. *Land to which society becomes absolutely entitled*, by foreclosure, surrender, or other extinguishment of the right of redemption, is as soon as practicable to be sold. 37 & 38 Vict. c. 42, s. 13.

LIABILITY, Limitation of. See MEMBERS.

### LIBEL.

84. *Equity jurisdiction to restrain publication of—Solvency of society.*—A motion for an injunction to restrain the publication and sale by the defendants of a book containing alleged libellous paragraphs in reference to the annual balance sheets and solvency of a building society, was refused.

WICKENS, V.-C., in giving judgment, distinguished the case of *Dixon v. Holden*, (L. R. 7 Eq. 488), where what was restrained was an advertisement of an absolutely false statement: *Mulkern v. Ward*, 1872 ; L. R. 13 Eq. 619.

### LIMITATIONS—STATUTE OF.

85. *Mortgagor omitting to redeem within statutory time.*—This case involved the question of whether the Statutory Limit of time within which only a Mortgagor can bring an action to redeem his property is absolute, or whether it was capable of being extended in cases where the person seeking redemption has, during part, or the whole of the time, been under disability.

BACON, V.-C., said that he felt no doubt about the question. Whatever the motive or intention of the legislature may have been it was not for the court to

speculate, but the fact remained that the legislature had declared that, however able or however disabled a man may have been, he could not Redeem his estate except within a certain period, which was formerly twenty, and now since Jan. 1, 1879, had been reduced to twelve years. The plaintiff's action must therefore be dismissed, and, if the defendant insisted upon it, with costs.

*Forster v. Patterson*, March, 1881; L. R. 17 Ch. D. 132.

LIMITED LIABILITY of members. See MEMBERS.

### LUNACY.

86. *Of a member.*—The rules should contain a provision for the case of members becoming lunatic, as there is nothing in the Building Societies Act, 1874, which meets it.

87. *Of a trustee.*—When any person, in whose name government stock is standing, as trustee for a building society, becomes lunatic, the registrar may, on application and proof satisfactory to him, direct the transfer of the stock into the name of any other person or persons as trustee or trustees. 37 & 38 Vict. c. 42, s. 26.

### MANDAMUS.

88. A writ of *mandamus* has been held not to lie for reinstating the secretary of a benefit society, who had been dismissed by a resolution of the society, as *mandamus* to reinstate a person in an office only lies where the office, and its tenure, are of a permanent character: *Evans v. Hearts of Oak Benefit Society* (before Cockburn, C. J., Blackburn, Mellor, and Lush, JJ.), 1866; 12 Jur. (N. S.) 163.

89. *Mandamus* will not lie against the registrar for refusing to certify illegally altered rules. See *R. v. J. Tidd Pratt, Esq.*, RULES.

## MARRIED WOMEN.

90. *May hold shares, &c., to which no liability is attached.*—The Married Women's Property Act, 1870, provides that any married woman, or any woman about to be married, may apply in writing to the committee of management of an industrial and provident society, or to the trustees of a friendly society, benefit building society, or loan society, that any share, benefit, debenture, right, or claim whatsoever in, to, or upon the funds of such society, to the holding of which no liability is attached, and to which she is entitled, may be entered in the society's books in her name or intended name as a married woman entitled to her separate use. 33 & 34 Vict. c. 93, s. 5. As a building society established under the Act of 1874, is not one of the societies enumerated in this section and has no trustees, it would seem that the section does not apply to such a society; but it would probably continue to apply to a benefit building society certified under the Act of 1886, even after such society had become incorporated under the Act of 1874.

91. *Separate estate—Charge on.*—The question of wife's separate estate arose and a bill was filed by the *Provident Building Society* of Exeter, against the defendants, praying that an account might be taken of what was due to the society for principal, interest, and costs upon various loans effected between 1864 and 1874.

It appeared that various sums of money had been borrowed by the defendant from the society from time to time, the total amount due for instalments, arrears, fines, interest, and costs being 1,413*l.* 13*s.* 1*d.*, which together with the present value of the future instalments, calculated as provided by the rules (discounted after 5½ per cent. per annum) made a total sum of 2,678*l.* 4*s.* 11*d.*

A considerable portion of the security consisted of



the *separate estate* of the defendant's wife S. G. ; and the principal ground of defence was that in assigning her interest she had been subjected to undue influence and did not really know what she was doing.

BACON, V. C., in giving judgment said that there was no defence to the action :—

In the first transaction the defendant borrowed 1,100*l.*, but the property he proposed to mortgage was worth only 760*l.*, and the society naturally desired some further security. The proposal accordingly was that the separate estate of the wife should be bound for the debt.

A memorandum was prepared and signed to that effect under the most explicit terms, and unless he were to say that a Married Woman's Separate Estate was not her separate estate, and that she could not dispose of it or give it to her husband, it was impossible to say that the transaction was impeachable.

The same observation would apply to other transactions. Mrs. G. was aware of all the transactions, and in some instances she had personally applied for the loans. He could not pay the slightest attention to her statement that she did not know what she was doing, contradicted as it was by witnesses of unimpeachable character, and there was no proof of her having been under *duress*.

The money had been borrowed to assist her husband in racing and other hazardous purposes, and the wife was well acquainted with everything that took place.

Judgment must accordingly be for the plaintiffs, with costs.

*Provident Building Society v. Greenhill*, June, 1877.  
(Not reported).

## MEMBERS.

92. *A stock or fund is to be raised by their subscriptions for making advances to members. See PURPOSE.*

93. *Limitation of liability of.*—The liability of a member in respect of an unadvanced share is limited to the amount actually paid or in arrear on such share, and in respect of an advanced share, is limited to the amount payable thereon under any mortgage or other security, or under the rules of the society. 37 & 38 Vict. c. 42, s. 14.

94. *How disputes are to be settled* between the society and any of its members, or any person claiming by or through any member, and *what fines* are to be imposed, are matters to be set forth in the rules. See DISPUTES, FINES, RULES.

*Minors may be members.* See MINORS.

*Members dying intestate*, provision for payment of money in case of. See DEATH.

See also CALLS, MEMBERSHIP, SUBSCRIPTIONS.

## MEMBERSHIP.

95. *Officer executing a deed containing a false recital of membership, but believed by him to be an ordinary mortgage.*—E., the surveyor of a building society, at the request of the directors, agreed to purchase land of the society, on the understanding that he could immediately mortgage it to the society for the full amount of the purchase money, and executed, without reading it or knowing its contents, a deed prepared by the society's solicitor, which he believed to be an ordinary mortgage for securing the purchase money and interest.

The deed, in fact, recited that E. was a member of the society, and had subscribed for a certain number of shares, and that the purchase money had been advanced to him in respect of his shares, and it contained a covenant by E. to make payments on the shares according to the rules of the society. E. never applied for shares, and did not comply with any of the

conditions prescribed by the rules for the admission of members.

His name was not entered in the register of members, and the directors never called upon him to make payments as a member. Two years after the date of the mortgage the society was ordered to be wound up.

*Held*, on the evidence, by MALINS, V.C., that the mortgage deed did not represent the real transaction, and that E. could not be treated as a shareholder (so as to be made contributory), but that he was liable for the amount secured by the mortgage deed.

His Honour observed that, although it is true that if a man will have the folly to execute deeds, which he has not looked at, he must suffer the consequences, yet the conclusion he came to was that the deeds were erroneously drawn, that E. ought not to have been asked to execute them, that, though he did execute them, they did not represent the real transaction, and that he (the vice-chancellor) *was bound to look at what the real transaction was.*

*Re Victoria Building Society, Empson's Case*, 1870 ; L. R. 9 Eq. 597.

## MINORS.

96. *May be elected members of a building society, unless its rules prohibit such admission, and may give all necessary acquittances ; but, during nonage, are not competent to vote or hold office.* 37 & 38 Vict. c. 42, s. 38.

## MORTGAGE.

97. *Under the Building Societies Act, 1874, societies are to make advances out of their funds to members upon security of freehold, copyhold or leasehold estate by way of mortgage.* 37 & 38 Vict. c. 42, s. 18.

98. *In the application of the Act to Scotland, mortgage means "conveyance or bond and disposition in security."* 37 & 38 Vict. c. 42, s. 6.

99. The terms on which *mortgages* may be *redeemed*, and provision for the *custody* of the mortgage deeds and other securities are matters to be set forth in the rules. 37 & 38 Vict. c. 42, s. 16.

100. *The form of mortgage* may be described in a schedule to the rules. 37 & 38 Vict. c. 42, s. 19.

101. *Death of mortgagor intestate*.—Where a member, who has executed a mortgage to a society, dies intestate, leaving an infant heir, the society may, after selling the mortgaged premises, pay the member's administrator up to one hundred and fifty pounds. See DEATH.

102. *Exemption from stamp duties* does not extend to mortgages. See STAMP DUTY.

103. *Redemption of mortgage*.—When all moneys secured by any mortgage or further charge have been fully paid or discharged, the society may endorse upon or annex to, such mortgage or further charge a reconveyance; or a receipt, in the form specified in the schedule to the Act of 1874, which shall vacate the mortgage or further charge without reconveyance. 37 & 38 Vict. c. 42, s. 42. See EQUITY OF REDEMPTION.

104. *Mortgages held by trustees* for societies existing at 2nd November, 1874, vest, on the incorporation of the society, in the society without conveyance. See CERTIFICATE OF INCORPORATION.

105. Care should be taken that the mortgage deed is *consistent with the rules* of the society, and so as not to press unfairly on the mortgagor.

Where the plaintiff, a member of a terminating society, received an advance in respect of his shares,

on which he was to pay subscriptions until the objects of the society were accomplished, it was *held* that, upon the terms of the deed and of the society's rules, the plaintiff was entitled to redeem only upon payment of all future subscriptions on his shares until the dissolution of the society—its probable duration to be ascertained by calculation, and the future payments treated as if immediately due: *Mosley v. Baker*, 1848; 18 L. J. 457, Ch.; 18 Jur. 817; 13 L. T. Rep. 317. See *infra* (108).

106. *Second mortgagees who were virtually transferees—Intervening incumbrancers of whose charge they had no notice—Tacking.*—A member of the M. Building Society having made a mortgage to the trustees of the society, and a subsequent equitable charge in favour of the plaintiffs, executed a second mortgage of the property to the defendants, the trustees of the L. Building Society, of which he was also a member, in consideration of their paying off the first mortgage. The receipt of the trustees of the M. Society was indorsed upon the first mortgage, and the title-deeds handed over to the defendants, who had no notice of the plaintiff's charge.

CAIRNS, L.C., *held* (reversing the decision of ROMILLY, M. R.) (1°) That the defendants had the better equity, and, therefore, that the rule, "*Qui prior est tempore, potior est jure*," did not apply; (2°) That on the satisfaction of the first mortgage the legal estate in the property was vested, by virtue of the 5th section of 6 & 7 Will. 4, c. 32, (which corresponds in effect with 37 & 38 Vict. c. 42, s. 42), either in the original mortgagor or in the parties who had the best right to call for it; in either of which cases it had passed to the defendants.

The defendants at the time of paying off the first mortgage made a further advance, which was included in the mortgage to them:—*Held*, that they were not

entitled to tack this : *Pease v. Jackson*, 1868 ; L. R., 3 Ch. Ap. 576 ; 37 L. J. 725, Ch. ; 17-W. R. 1.

This decision is distinguishable from that in *Prosser v. Rice*, (1859, 28 Beav. 68), where property was mortgaged to a building society, and afterwards to A., the mortgagor borrowed money from B. to pay the society, and then executed a mortgage to B., and it was held that the legal estate vested in A., inasmuch as, in *Prosser v. Rice*, the mortgage to the person paying off the building society, was subsequent to the payment, while in *Pease v. Jackson*, it was all one transaction. It may be observed, however, that the Master of the Rolls (whose decision was reversed) in his judgment in *Pease v. Jackson* approved of the decision in *Prosser v. Rice* (a).

But see, as to this generally, the Conveyancing and Law of Property Act, 1881, (44 & 45 Vict. c. 41).

107. *Mortgage by executor of testator's estate—Power of sale—Specific performance.*—An executor, in order to obtain advances for the purposes of his executorship, mortgaged certain leaseholds, belonging to his testator, to a building society, which subsequently sold the property under the power of sale in the mortgage, but the purchaser raised the objection that the mortgage was invalid :

MALINS, V. C., held, that the mortgage was valid so far as it was a security for the advances actually made to the executor, but that the clauses purporting to secure to the society the payment of instalments due by the executor as a member were inoperative, and decreed specific performance : *Cruikshank v. Duffin*, 1872 ; 26 L. T. Rep. (N.S.) 121, Ch. ; L. R. 13 Eq. 555.

108. *Mortgagor bound by the covenants of the mortgage-deed.*—The plaintiff being entitled to an advance of three hundred pounds from a Starr-Bowkett Build-

ing Society found security only for one hundred and fifty pounds, which sum was accordingly advanced, the balance remaining at his call until he should find sufficient security. By the mortgage-deed he covenanted to repay seven pounds ten shillings per quarter, and paid at that rate for several years, although he had not found security for, and consequently had not had advanced to him, the balance of his appropriation (one hundred and fifty pounds). He now claimed to pay only three pounds fifteen shillings per quarter, relying on one of the rules of the society, which provided that an appropriated member should repay at the rate of "ten per cent. per annum on the amount advanced," and filed a bill to restrain the defendants, the trustees of the society, from proceeding with an action at law to recover arrears and fines due :

JESSEL, M. R. declined to decide upon the construction of the rule in question, for the plaintiff had covenanted to pay seven pounds ten shillings per quarter, and in the absence of evidence of fraud, surprise, or mistake, the court could give him no relief; and dismissed the bill with costs: *Kilsby v. Cooper*, Feb. 1874 (not reported).

109. *Mortgage-money how to be used.*—It had been decided prior to the Building Societies Act, 1874, that advances may be made, and securities taken, upon houses or property neither built nor purchased with the mortgage money (*Cutbill v. Kingdom*, 1847; 1 Exch. 494; *Morrison v. Glover*, 1849, 4 Exch. 430; 19 L. J. 20 Ex.), and that Act has not altered the effect of those decisions in this respect (see 37 & 38 Vict. c. 42, s. 18).

110. Does a mortgage create the relation of *landlord and tenant* between the borrower and the society?

"The object and general contents of the deed are inconsistent with the intention of creating the relation of landlord and tenant

as stated in the concluding part of the deed: WILDE, C. J., in *Walker v. Giles*, 1848; 6 C. B. 662; 18 L. J. 323, C. P.; 13 Jur. 588; 13 L. T. Rep. 209.

"In any view of the case it would be merely a tenancy at will:" CROMPTON, J., in *Turner v. Barnes*, 1862; 2 B. & S. 435; 9 Jur. (N.S.) 199; 31 L. J. 170, Q. B.; 6 L. T. R. 418; 10 W. R. 561.

See also ACTION, ASSIGNMENT, BONUS, FORECLOSURE, MEMBERSHIP, REDEMPTION, TENANCY, VOTING.

MORTGAGOR, Death of, intestate, leaving infant heir.  
See DEATH.

### NAME OF SOCIETY.

111. *Must not resemble that of an existing society.*—No society is to be registered in a name identical with that in which a subsisting society is already registered, or so near resembling the same as to be calculated to deceive, unless such subsisting society is in course of being terminated or dissolved, and consents to such registration. 37 & 38 Vict. c. 42, s. 17.

112. But a society *may change its name* by resolution of three-fourths of the members present at a special meeting, subject to the restriction stated above. 37 & 38 Vict. c. 42, s. 22.

NEGLIGENCE of Arbitrators to act, or make award.

See DISPUTES.

„ of Solicitor. See SOLICITOR.

NOTICE of an Appointment by Arbitrators to be properly served. See DISPUTES.

„ of commencement and Termination of Dissolution or Winding-up to be sent to Registrar.  
See DISSOLUTION.

113. *Notice of incumbrance—Given to solicitor.*—A person does not, by habitually employing the same



solicitor when he requires a solicitor's services, make that solicitor his regular agent to receive notices of incumbrances or otherwise, and so bind the principal.

*Saffron Walden Building Society v. Rayner*, 1880, Ct. of App. (JAMES, BAGGALLAY, and BRAMWELL, L. JJ.); L. R. 14 Ch. D. 406; 43 L. T. (N.S.) 8, (BACON, V.-C., reversed).

OBJECTS of a Building Society. See PURPOSE.

OFFICE. See REGISTERED OFFICE.

### OFFICERS.

114. *Under the Building Societies Act, 1874, the rules must set forth the manner of appointing, remunerating, and removing the board of directors, or committee of management, auditors, and other officers, as well as their powers and duties. Such officers are to be bound by the rules.* 37 & 38 Vict. c. 42, ss. 16, 21.

115. *What officers are to give security.*—Every officer having the receipt or charge of any money belonging to the society is, before taking upon himself the execution of his office, to become bound with one sufficient surety at the least, or to give the security of a guarantee society, or such other security as the society direct, in such sum as it require, that he will render proper account and payment of moneys (sect. 23), and such bond or security is exempt from stamp duty. 37 & 38 Vict. c. 42, s. 41.

116. *Officers to account.*—Every such officer is to give in his account when required to do so by the rules or by the directors, and to pay over all moneys and deliver up all securities, effects, books, papers, and property of the society remaining in his hands; in default, the society may sue upon the bond, or apply to the court, who may proceed in a summary way. 37 & 38 Vict. c. 42, s. 24.

117. *For punishment of fraud* in withholding money, &c., the Act of 1874 provides a penalty not exceeding twenty pounds, or imprisonment, with or without hard labour, for any time not exceeding three months; but this is not to prevent proceedings by indictment, if a conviction has not previously been obtained under the Act. 37 & 38 Vict. c. 42, s. 31. To render an officer liable to the penalties imposed by this section, it must be shown that he has been guilty of some fraud or misrepresentation. Mere inability to pay is not enough. Per WILLES and KEATING, JJ., in *Barrett v. Markham*, L. R. 7 C. P. 405.

118. *Their remuneration.*—In the absence of a special contract for personal responsibility on the part of the directors, the officers can look only to the funds of the society for payment.

“We think it a mistake to suppose that in societies of this kind, the surveyor, or secretary, or other officers do work and labour upon the same terms as professional men of their class ordinarily do. They generally have a much greater interest in them than the directors, and in the great majority of cases are the individuals who get them up, and at whose request the directors consent to accept the office and take upon themselves the liabilities and duties of their situation: and it is to me very clear that such officers discharge duties and perform services with the understanding on all hands that they are to be remunerated out of the funds, and that if the funds fail, the officers must remain unpaid.”—Per MARTIN, B. (delivering judgment of POLLOCK, C.B., CHANNELL, B., and himself), in *Alexander v. Worman*, 1860, 6 H. & N. 100; 30 L. J. Ex. 198; 3 L. T. (N.S.) 477; 25 J. P. 312.

119. *Removal of officers* must be conducted strictly according to the rules.

Where, when the rules provided that officers should be removed by a committee of eleven, and notice of meeting was only given to ten, though the other had said that he could not attend, the proceedings were held to be void: *Roberts v. Price*, 1847, 4 C. B. 1231; 11 Jur. 352; 16 L. J. 169, C. P.

120. *Personal liability of officers.*—The statute 10 Geo. 4, c. 56, provides that the officers of an unincorporated society shall not be personally liable to make good deficiencies in the funds, unless by registered writing they took such liability upon themselves, when they might limit it (sect. 22). The statute 37 & 38 Vict. c. 42, contains no provision to this effect. It follows 10 Geo. 4, c. 56, however, in making the officers accountable for all money they receive and for deficiency caused by their own misconduct or breach of trust (see *supra*, 116, 117).

### PAID-UP SHARES.

121. *May be issued under the Building Societies Act, 1874* ; and there is now no restriction as to the amount of subscriptions that may be received at any one time, whether under discount or otherwise (see 37 & 38 Vict. c. 42, s. 13).

### PENALTIES.

122. *Imposed by the Building Societies Act, 1874.*—If any society formed under the Act (or persons representing themselves to be such a society) commences business without being incorporated, or if any society under the Act makes default in forwarding the returns required, or inserting in any deposit book the matters required by sect. 15, or makes a return wilfully false in any respect, the person (or persons) so commencing business, or making such default or false return is liable for every day business is so carried on, or for every such default or false return to a penalty not exceeding 5*l*. 37 & 38 Vict. c. 45, s. 43.

See also DIRECTORS, OFFICERS.

PERMANENT SOCIETY defined. See DEFINITIONS.

PERSONAL LIABILITY of Directors for money borrowed in excess. See DIRECTORS.

„ of Officers. See OFFICERS.

PLACE OF MEETING. See REGISTERED OFFICE.

POWER OF SALE. See MORTGAGE, REDEMPTION.

### POWER TO BORROW.

123. *Under the Building Societies Act, 1874*, societies may receive deposits or loans at interest from the members or other persons, from corporate bodies, joint stock companies, or from any terminating building society, to be applied to the purposes of the society, within the following limits :—

- (a.) *In a permanent society*, the total amount to be so received is not to exceed (a) *two-thirds* of the amount for the time being secured by the mortgages ;
- (b.) *In a terminating society*, either not to exceed such *two-thirds*, or not to exceed twelve months' subscriptions on the shares in force. 37 & 38 Vict. c. 42, s. 15.

124. *The rules must set forth* whether and to what extent (not exceeding the prescribed limits), the society intends to avail itself of the borrowing powers of the Act. 37 & 38 Vict. c. 42, s. 16 (b).

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(a) The limit fixed by the statute of 1874 is based on the decision in the leading case of *Laing v. Reed*, where it was held by HATHERLEY, L. C., and GIFFARD, L. J., that a rule empowering the trustees of a building society to borrow money, for the purposes of the society, to an extent not exceeding two-thirds of the amount secured by the mortgages, was not illegal under the statute 6 & 7 Will. 4, c. 32 : 1869, L. R. 5 Ch. Ap. 4; 39 L. J. (N.S.) 1 Ch.; 21 L. T. (N. S.) 83.

(b) Such a provision was most desirable in order to satisfactorily define the position of societies which wish to borrow money. It had already been decided with regard to existing societies, that they had no power to borrow unless their rules specially authorized them to do so to a limited extent. These

125. *Every deposit book or acknowledgment or security of any kind given for a deposit or loan must have printed or written therein or thereon the whole of the 14th and 15th sections of the Act.* 37 & 38 Vict. c. 42, s. 15.

126. *For money borrowed in excess of the prescribed limits the directors receiving such loans or deposits are personally liable.* 37 & 38 Vict. c. 42, s. 43.

See also PROMISSORY NOTES.

127. *Depositors affected by rules.*—Where the depositors in a society received a book called a “Member’s Deposit Book,” which contained printed rules purporting to be “Rules of the Deposit Branch,” one of which provided that the general rules of the society should be binding on all persons who might make deposits :

MALINS, V. C., *held*, that the depositors were bound by the rules of the society: *Re Victoria Building Society, Hill’s and Jones’ Cases*, 1870, L. R. 9 Eq. 605 ; 39 L. J. 629, Ch. ; 22 L. T. Rep. (N.S.) 777.

PREFERENTIAL SHARES. See SHARES.

PROCEEDINGS necessary for the Termination or Dissolution of a Society. See DISSOLUTION.

### PROMISSORY NOTE.

128. *Given by committee for money improperly borrowed.*—The members of the committee of a building society borrowed money from their bankers for purposes not strictly within their borrowing powers, and

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numerous decisions are still applicable to unincorporated societies. (See *Laing v. Reed*, (*supra*) ; *Re National Building Society, Ex parte Williamson*, 1869, L. R. 5 Ch. Ap. 309 ; *Re Victoria Building Society, Hill’s and Jones’ Cases*, 1870, L. R. 9 Eq. 605 ; 39 L. J. 629, Ch. ; 22 L. T. Rep. (N.S.) 777 ; *Re Coetmor Building Society*, 1871, 51 L. T. 253, &c).

gave a promissory note for the amount borrowed. Soon after the transaction the society suspended business. On bill filed, by one of the members of the committee who signed the note, against the bankers and the other members of the society to ascertain his liability :

JAMES, V. C., *held*, that only the persons who signed the note, and the persons who authorized the signatures, were jointly and severally liable to make good the amount: *Moye v. Sparrow*, 1870; 22 L. T. Rep. (N.S.) 154, Ch.; 18 W. R. 400.

129. *Deposit note where no power to borrow.—Breach of warranty of authority.*—The plaintiff lent 70*l.* to a building society, and received a receipt signed by the defendants, as two directors of the society, in the following form :—

Imperial Permanent Benefit Building Society,  
London, 17th June, 1867.

This is to certify that Mrs. A. E. Richardson, of, &c., has this day deposited the sum of 70*l.* with the Imperial Permanent Benefit Building Society for a period of three months certain, upon which interest at the rate of 5*l.* per cent. per annum will be allowed.

J. W. WILLIAMSON, } *Directors.*  
C. L. LAWSON, }

WM. RICHARDSON, *Secretary.*

*Memorandum.*—The above deposit may be withdrawn at any time subsequent to 17th Sept. 1867, upon receipt of fourteen days' previous notice of such intended withdrawal.

The society had no power to borrow money, and the plaintiff being unable to get her money back from the society, sued the defendants. On the above facts, the court having power to draw inferences :—

The Court of Queen's Bench (COCKBURN, C. J., BLACKBURN, MELLOR, and HANNEN, JJ.), *held*, that the defendants were liable, they having, by signing the receipt in effect represented that they had authority to make a binding contract of loan on behalf of the society, and so induced the plaintiff to part with her money.

COCKBURN, C. J., laid it down that, by the law of England, persons who induce others to act on the supposition that they have authority to enter into a binding contract on behalf of third

persons, may on its turning out that they have no such authority, be sued for damages for the breach of an implied warranty of authority. This he said was decided in *Collen v. Wright* (8 E. & B. 647), and other cases.

*Richardson v. Williamson and Lawson*, 1871; L. R. 6 Q. B. 276.

130 *What is an improper form of note—Personal liability of signers.*—A promissory note in this form—“On demand we promise to pay J. A. two hundred pounds, value received for the Second Gateshead Provident Benefit Building Society, and interest thereon at five per cent. per annum, payable half-yearly,” was signed by the defendants thus—“G. M., C. D. G., J. N., Trustees; T. N., Secretary.”

The writ of summons was sued out against all the four defendants, endorsed, under the Common Law Procedure Act, with the promissory note sued upon. The defendant Neilson (the secretary), who had made away with the moneys of the society, did not appear to the writ, and judgment was accordingly signed against him by default, and the plaintiff declared against the three other defendants.

*Held* by the Court of Exchequer (KELLY, C. B., MARTIN, CHANNELL, and CLEASBY, BB.) that the defendants were personally liable on the said note, and that the case was not substantially different from the cases of *Price v. Taylor* (*infra* 131) and *Healey v. Storey* (3 Ex. Rep. 3).

KELLY, C. B., in giving judgment said:—“When we look at the instrument as set forth in the record, we find a promise to pay this money as ‘value received for the society, and interest thereon.’ It is clear, therefore, that the ‘value received’ is for the society. Now, when a promissory note is given by any person, *it is quite immaterial for whom the value was received*, or whether that is stated at all. Those words might be struck out altogether. They do not at all affect the construction of the note or the liability of the persons signing it.”

The Chief Baron was further of opinion that the circumstance of the defendants adding the word “trustees” to their signatures did not affect their liability or make any difference. If, however there were any doubt at all upon this point, it would be removed

by the case of *Price v. Taylor*, where the promissory note was almost identical with that in *Allan v. Millar*. His lordship concluded: "I am clearly of opinion, both on principle and authority, that the defendants here are *personally liable*. . . . Were it necessary or profitable to look beyond the instrument itself here, there is nothing more likely than that the society in this case requested three or four of their officers to give their personal security."

CHANNELL, B., entirely agreed with the opinion expressed by MARTIN, B., in his judgment in the case of *Price v. Taylor*, that the meaning of a written document is to be collected from the terms in which it is expressed, and that where a bill or note is drawn by an agent, executor, or trustee, he should take care, if he means to exempt himself from personal liability, to use *clear and explicit words* to show that intention. So here, if it had been intended to exclude the personal liability of the defendants, apt words signifying such intention should have been used, as could easily have been done.

*Allan v. Millar*, 1870; 22 L. T. Rep. (N.S.) 825, Ex.

131. In *Price v. Taylor*, referred to above, the promissory note in question was as follows:—"Midland Counties Building Society, No. 3. Birmingham, March 12, 1858.—Two months after demand in writing we promise to pay T. P. the sum of one hundred pounds, with interest after the rate of six pounds per cent. per annum for value received. W. R. H., J. T., Trustees; W. D. F., Secretary." Held that the signers (the defendants) were personally liable on the note: 29 L. J. 331, Ex.; 6 Jur. (N.S.) 402; 2 L. T. R. (N.S.) 221; 8 W. R. 419; 5 H. & N. 540; 24 J. P. 470.

132. The persons signing a promissory note, on behalf of a society, may set off against a claim under it any sums due to the society by the lenders: *Ex parte Clennell*, 1861, 4 L. T. (N.S.) 60, Bank.

## PROPERTY.

133. *Vests on incorporation without conveyance*.—All rights of action and other rights, and all estates and interests in real and personal estate whatsoever, on the



incorporation of the society, vest in it without any conveyance or assignment whatsoever, except in the case of stocks and securities the title to which cannot be transferred without admittance. 37 & 38 Vict. c. 42, s. 27.

## PURPOSE

134. *For which societies may be established.*—Any number of persons [not being less than three, besides the intended secretary (see 37 & 38 Vict. c. 42, s. 17)], may establish a building society under the Act of 1874, either terminating or permanent, for the purpose of raising by the subscriptions of the members a stock or fund for making advances to members out of the funds of the society upon security of freehold, copyhold, or leasehold estate by way of mortgage. 37 & 38 Vict. c. 42, s. 13.

135. *Deposit or loans may be received to be applied to the purposes.* See POWER TO BORROW.

136. *The purposes to which the funds are to be applied must be set forth in the rules.* See INVESTMENT.

## RATES.

137. *Paving rate—Liability of present and future owners to pay*—*The Metropolis Local Management Acts, 1855 and 1862* (18 & 19 Vict. c. 120, ss. 105-250, and 25 & 26 Vict. c. 102, s. 77)—Under sect. 77 of the 25 & 26 Vict. c. 102, the amount apportioned by the vestry or district board of a parish to be paid by the owners of houses or land towards the expenses of paving new streets under sect. 105, of the 18 & 19 Vict. c. 120, may be recovered by the vestry or board in an action against either the person who is owner of the premises at the time when the apportionment is made, and the right to recover first accrues, or against any

*future or subsequent owner of the premises; and that, whether such amount is made payable at once in one sum, or at intervals by instalments, the effect of the above-mentioned two Acts, taken together, being to impose the liability upon the land.*

So held by the Court of Exchequer, KELLY, C. B., BRAMWELL, CHANNELL, and PIGOTT, BB.

*The Vestry of Bermondsey v. Ramsey* (L. R. 6 C. P. 247; 24 L. T. Rep. (N.S.) 429; 40 L. J. 206, C. P.) approved and followed: *Plumstead District Board of Works v. Planet Building Society*, 1872; 27 L. T. Rep. (N.S.) 656; L. R. 8 Exch. 63.

RECEIPTS, what, exempt from stamp duty. See STAMP DUTY.

„ to be endorsed on mortgage Deed.

138. *Statutory receipt in discharge—As to vesting of legal estate—Successive mortgages.*—When a mortgage to a building society is paid off, and the society endorses the statutory receipt on the mortgage, the effect of such receipt is to vest the legal estate in the person who is best entitled to call for it, without regard to the person who actually paid the money.

Where there are successive subsequent mortgagees, and the mortgagor pays the money, the effect of the receipt is to vest the legal estate in the first of such subsequent mortgagees, but where the mortgage to the society is paid off by a later mortgagee without notice of any prior equitable mortgage, the legal estate vests in such later mortgagee. *Pease v. Jackson*, (sup. 106), considered: *Fourth City Mutual Building Society v. Williams*; and *Marson v. Cox*, Nov., 1879 (JESSEL, M. R.); L. R. 14 Ch. D. 140; 42 L. T. (N.S.) 615.

RE-CONVEYANCE, On Incorporation of existing Societies, Property vests without. See PROPERTY. See also MORTGAGE.

## REDEMPTION.

139. *Under the Building Societies Act, 1874.*—The terms on which mortgages may be redeemed are to be set forth in the rules. 37 & 38 Vict. c. 42, s. 16.

140. *Receipt endorsed on mortgage* is a sufficient discharge without re-conveyance. See MORTGAGE.

141. *Compulsory sale—Discount on future instalments.*—Care should be taken in framing the rule for compulsory sale, not to make it too burdensome on the member.

The rules of a building society, while allowing 5 per cent. discount in case of voluntary redemption, provided that 'in case of sale the purchase-money should "be applied in satisfaction of all moneys then due or thereafter to become due from the mortgagor; in respect of subscriptions, fines, insurance or otherwise, under the mortgage-deed, and the surplus to be paid to the mortgagor." The Lord Chancellor (HATHERLEY) held that, as there was no mention of discount in the rule, the whole of the future instalments of the member were chargeable in full against the proceeds of the sale.

In such a case there is no difference between a permanent and a terminating society. Decision of GIFFARD, V. C., reversed.

HATHERLEY, L. C., in giving judgment said:—Where there is a compulsory sale in default of payment of the instalments, the money is all to be paid at once, as in the case of redemption under the 142nd rule (of the society); but there is this difference, that in the case of redemption the mortgagor has a rebate allowed, but in the other case he is to pay in the same way, but there is nothing about an allowance of a rebate or discount, and the directors would not be at liberty to make any. There is no power given them to do so.

*Matterson v. Elderfield*, 1869; L. R. 4 Ch. Ap., 207; 20 L. T. Rep. (N.S.) 503; 17 W. R. 422; 33 J. P. 326.

142. *In a suit for redemption, mortgagee is entitled to costs.*—A mortgage was executed in 1858 to secure an advance of 900*l.* from a building society to the plaintiff. In February, 1861, the plaintiff fell into arrear in his payments and soon afterwards the society entered into possession. The plaintiff disputed the amount claimed by the society to be due from him, and there was some correspondence, but before any arrangement was come to, the society sent him notice of their intention to sell forthwith. The bill was filed in May, 1868, for the purpose of redeeming the security and to restrain the threatened sale. Upon the hearing, on further consideration, the Vice-Chancellor, being of opinion that the society ought in giving notice to sell to have allowed time for redemption, and also to have ascertained the precise amount to which they were entitled, refused to allow the defendants their costs as mortgagees; and also directed that, if the plaintiff should fail to redeem, all further proceedings in the cause should be stayed without costs. From this decree the defendants appealed.

The court (SELBORNE, L. C., JAMES and MELLISH, L. JJ.) *held*, that in such case there might be an appeal for costs, and that the defendants had not done anything beyond insisting on the performance by the plaintiff of the terms of his contract. The defendants must have their costs allowed in the usual way, and might add to their charge the costs of the appeal.

Lord SELBORNE said that a contract between mortgagor and mortgagee, as understood in the courts, made the mortgage a security not only for principal and interest and such ordinary charges and expenses as are actually provided by the instrument creating the security, *but also for the costs properly incident to a suit for foreclosure or redemption.* These rights, resting substantially upon contract, would only be lost or curtailed by such inequitable conduct on the part of a mortgagee as might amount to a violation or culpable neglect of his duty under the contract. They did not rest upon any exercise of that discretion of the court, which in litigious causes was (generally) not subject to review. Even if the defendants, the mortgagees, had so improperly conducted themselves, by resisting the right to redeem, and

by making unfounded claims or causing vexatious delays and costs during the progress of the account, as to make it right to refuse them all costs of suit in case of redemption, it did not follow that a plaintiff, whose whole suit was founded upon his offer to redeem, and who, if he eventually failed to redeem, made the whole proceedings, from beginning to end, useless and nugatory, could in this latter event properly be exonerated from costs.

His lordship further remarked, that—"Any departure from these principles in the general course of administration of justice in this court would tend to destroy or at least very materially to shake and impair the security of mortgage transactions and the safety of trustees; and, instead of being beneficial in the result to those who must have occasion to borrow money on security or to repose confidence as to property in their friends or neighbours, would throw the former class of persons into the hands of those who indemnify themselves against extraordinary risks by extraordinary exactions, and would deprive the latter class of the assistance of all who cannot afford or are not inclined to bestow upon the affairs of other persons their money as well as their trouble and time."

MALINS V.-C., while himself deciding that the society was entitled to charge those fines and commissions which were actually allowed in taking the accounts, appears to have considered that they ought to have been satisfied with less; and these claims were "unreasonable and excessive" and of such an "oppressive character" as to make it right, *on that account*, to refuse those costs of taking the account to which, so far as appeared, he would otherwise have held the mortgagees entitled.

On this point the Lord Chancellor said, he was at a loss to see how a court of equity could be justified in imposing upon any mortgagees the penalty of a forfeiture of their costs, or in designating their conduct as oppressive, *merely* because they had insisted upon *the performance of the contract between themselves and their mortgagor*, and had declined to waive any portion of the rights to which they had been adjudged to be entitled.

*Cotterell v. Stratton*, 1872; L. R. 8 Ch. Ap. 295.

148. *Taxation of costs*.—In *Cotterell v. Stratton* (*sup.*), on a distinct question of taxation of costs subsequent to the above decision, it was held that, as the sum originally advanced was less than one thousand pounds, the costs must be taxed on the lower scale, and that the fines and charges incurred could not, for this purpose, be considered as added to the amount

advanced. But held, also, that the scale of taxation was not dependent on the amount due when the bill was filed. Order of MALINS, V.-C., (L. R., 17 Eq. 543) affirmed by JAMES and MELLISH, L. JJ., 1874; L. R., 9 Ch. Ap. 514.

144. *Compulsory sale*—*Whole amount to be held "immediately payable," amounts to a covenant to pay beyond proceeds of sale.*—A mortgage deed declared that in case the defendant should neglect, for three successive months, to pay any portion of the moneys or interest thereby secured to a building society, or should neglect to observe any of its rules or regulations, the plaintiffs might sell the property and upon any sale *the whole amount* thereinbefore stipulated to be paid by instalments, was to be held *immediately payable*, subject to such discount as the directors might think proper to allow. It appeared that the repayments were not kept up, and the society took possession of the property which, being sold, did not produce sufficient to satisfy the entire debt.

The Court of Queen's Bench (BLACKBURN, LUSH, and ARCHIBALD, JJ.) held, that the words of the deed amounted to a covenant to pay the sum due beyond the proceeds of the sale.

BLACKBURN, J., in giving judgment, said the defendant had made certainly a rather improvident bargain, but it was a bargain. He agreed to take a loan of four thousand pounds, payable by instalments spread over a great many months, amounting in the whole to six thousand pounds. Then he agreed that if the repayments were not kept up, and any default arose, the society should have the right to sell the property, and that "upon any sale the whole amount thereinbefore stipulated to be paid by instalments remaining unpaid, should be held immediately payable, and be retainable accordingly from the proceeds of the sale, subject to such discount as the directors thought proper to allow." It had been argued that they were to construe that as not meaning that upon any sale the whole amount to be payable by instalments should become immediately due, but solely that the whole of the amount was to be taken out of the proceeds. By the agreement the whole amount was to be held "immediately payable," and the court must hold that as a promise that it should be paid im-

mediately. He quite agreed that the defendant had put himself very much in the power of the directors, and he might have thought better before making such an agreement; but having made it, he could not now escape the consequences of his own improvidence.

*Sheriff v. Glenton*, 1873; 54 L. T. 250.

**145. Power of sale—Moneys “immediately due and payable.”**

A condition that on a sale all moneys which would afterwards become due “shall immediately become due and payable” was held not to include prospective interest.

A member of a building society in March, 1871, received an advance of 600*l.* in respect of twelve shares of 50*l.* each, repayable by monthly instalments in a period of seven years, which included principal and interest. The mortgage deed provided that in case of default by the mortgagor, the trustees should have power to sell the property, and out of the money arising from the sale to retain all the costs and expenses incurred, and all subscriptions, fines, and other sums of money and payments, then due, or which would afterwards become due, in respect of the shares during the then remainder of the period of seven years, it being agreed that on such sale all moneys “which would at any time afterwards become due” should be “considered as then immediately due and payable.” The mortgagor was adjudicated bankrupt in 1872, and having made default in the payment of his instalments, the society in December, 1878, sold the property for 912*l.*, and the question arose in the bankruptcy, how much of the sum they were entitled to retain. They claimed to retain their costs and all fines due before the sale, and also all the instalments which would have become due in respect of the advance of 600*l.*, if the repayment had been made in its natural course during the seven years, and this the registrar decided that they were entitled to do. The trustee under the bankruptcy appealed :

The court *held* that upon the sale the costs and everything then due in respect of past instalments and fines must be paid to the society, and then it must be ascertained how much of the monthly payments represented principal and how much interest, and the balance of the principal which upon that footing remained unpaid must then be paid out of the sale moneys to the society. The registrar's order varied accordingly.

CAIRNS, L. C., said that the manner in which the mortgage deed was expressed and the rules were worded created a considerable amount of unnecessary obscurity, but still he thought no doubt could be entertained as to the real nature of the transaction. It was an advance to Mr. Goldsmith (the mortgagor) of the money which represented the amount of the shares for which he subscribed. If the ninth rule of the society was taken in connexion with the prospectus, which his lordship thought must be done, as there was nothing else to fix the rate of interest, it appeared to him clear that for the purpose of the mortgage Mr. Goldsmith was treated as if he had had an advance of 600*l.* which was to be repaid with interest thereon at 5*l.* per cent., but the repayment was to be spread over seven years, and was to be made by equal monthly instalments, each of them being made up of a portion of principal and a portion of interest. If that was so, one would, in the absence of any stipulation to the contrary, infer that in case of default being made in the payment of any instalment, all that was then due in respect of past monthly instalments and fines would have to be paid out of the moneys produced by a sale of the property, and that with regard to the future, the balance of the principal money being paid out of the sale moneys, there could be nothing in respect of which interest could arise. The provision in the mortgage deed as to the application of the sale moneys, when construed in a reasonable way, seemed to his lordship to be in accordance with this view. With regard to the future, it was quite clear that you could not construe the words "moneys which would afterwards become due" so as to include fines. No more could you include interest which could only arise if a principal sum remained outstanding and forborne.

JAMES, L. J., concurred.

MELLISH, L. J., was of the same opinion. According to the rules of this society an advance did not appear to be in anticipation of what would be ultimately due to a subscribing member, as it was in other cases which had been before the courts, but he was to repay the advance, which might either be greater or less than the amount of his shares. The deed must be construed in accordance with the rules. Interest could never become due after the principal had been paid, and, therefore, interest after



payment of the principal was not a sum which could ever become due to the society according to the rules.

*Re Goldsmith, ex parte Osborne* ; L. R. 10 Ch. App. 41.

146. *Mortgages from non-members.*—It has been held that if a society lend to non-members (as to a joint stock company), which it can do out of its surplus funds, the borrowers are entitled to redeem upon terms of an account, charging the loan with interest and crediting the payments made: *Dobinson v. Hawks*, 1848 ; 16 Sim. 407 ; 12 Jur. 1037 ; 12 L. T. 238.

See also ACTION, ASSIGNMENT, FORECLOSURE, MORTGAGE.

## REGISTERED OFFICE.

147. *The chief office* or place of meeting for the business of the society must be set forth in the rules. 37 & 38 Vict. c. 42, s. 16.

148. *Removal of office.* If the place of meeting of an unincorporated society be altered, notice in writing, signed by the secretary and three members must be given to the registrar within seven days before or after the removal. The place of meeting cannot be removed into another county. The restriction as to county does not apply to incorporated societies. 10 Geo. 4, c. 56, s. 10 ; 37 & 38 Vict. c. 42, s. 7.

149. *An alteration in the chief office of an incorporated society* can (in the absence of any provision in the rules for that purpose), only be made at a general meeting specially called for the purpose. See the Building Societies Act, 1877, s. 2. Notice must be given by the secretary of the society within seven days to the registrar, who will give a certificate of registration in the form in the schedule to the Act.

## REGISTER OF MEMBERS.

150. The register of members should be carefully kept up.

"To support the defendant's view of the case, it must be made to appear that the plaintiffs were Members of the building society. The primary evidence, the evidence which the legislature intended to exist of that fact, is not forthcoming. By the rules of the benefit society, it is directed that the name of each member shall be inserted in a book, and that book would, of necessity, be either in the actual possession of the defendants or under their control. My opinion is that the non-production of it, under the circumstances that appear in this case, must be taken to be conclusive evidence that the plaintiffs were not members of the building society." Per SHADWELL, V.-C., in *Dobinson v. Hawks*, (Art. 146, *supra*).

## REGISTRAR.

151. *Definition of, under the Building Societies Act, 1874.*—The registrar of friendly societies in England, Scotland, or Ireland, as the case may be, is to be the registrar of building societies (37 & 38 Vict. c. 42, s. 3). For his powers and functions as such, see introduction. The registrar for England is now the Central Office, which acts under its seal. (38 & 39 Vict. c. 60, s. 10), (a).

*Disputes, when to be determined by registrar.* See DISPUTES.

152. *His certificates* are to be given in the forms contained in the schedule to the Building Societies Act, 1877. See FORMS.

153. *Mandamus will not lie* against him for refusing to register illegally altered rules: *Reg. v. J. Tidd Pratt, Esq.* See RULES.

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(a) The chief registrar and the assistant registrar for England now constitute the Central Office, and either of them may do any act required to be done by the registrar.

*How far his certificate is conclusive as to the legality of a rule.* See RULES.

*His duties in case of Dissolution.* See DISSOLUTION.

REGISTRATION, Evidence of. See RULES.

154. *Registration, refusal of.*—The registrar may refuse to register rules presented to him by persons claiming to represent the society when there is a dispute, whether they really do so.

*Reg. v. Stephenson*, L. R. 7 Q. B. 741.

This was the case of two competing applications for the registry of a trade union which had been established many years. A building society, however, does not commence existence until incorporation. See section 43 of the Building Societies Act, 1874.

## REPAIRS.

155. *Lessor trespassing.*—(1.)—As a matter of law and precedent, although lessors have several remedies and powers at their disposal, they are not permitted to take the law into their own hands.

In the following case *JESSEL*, M. R., ordered a building society (the lessor) to be restrained from erecting, or permitting to remain erected, scaffolding on certain houses of which the plaintiff was the lessee:—

The society were the owners as mortgagees in possession of a very large number of houses in the East of London, and for some years they retained the plaintiff, who is a house agent, to collect the rents of that property and keep it in repair. During the time the plaintiff acted as their agent, the repairs swallowed up the whole or nearly all of the rents, and the society thought the better plan would be to grant a lease to the plaintiff of the entirety of this property with special covenants for keeping the property in repair. It was in evidence that the property had been allowed to fall into a state of utter disrepair, and the tenants had given their consent in writing for the property to be repaired. The defendants had not entered into the houses, but the work they were doing was work outside the houses, and consisted

simply of repairing roofs and portions of brickwork, which at present were neither wind nor water-tight. The defendants contended that there was no trespass on their part, and that the question ought to be tested in the balance between convenience and inconvenience. It was further contended that the defendants might sustain a very serious loss if the injunction was continued, and that the plaintiff was asking the court to obtain facilities for a grossly inequitable course of conduct, and to aid and abet him in a breach of covenant. It was submitted that the plaintiff should be left to his remedy by damages.

(2.)—On appeal, JAMES, L. J., said :—The Master of the Rolls was of opinion that the nature of the trespass was one which, under the Judicature Act, had continued the same as under the Common Law Procedure Act. He (the Lord Justice) was quite clear that, under the old practice of the Court of Chancery, if a man placed a scaffolding against his house for the purpose of repairing his walls, the court would have granted an injunction. The balance of convenience and inconvenience had nothing to do with the question. He agreed with the Master of the Rolls that the defendants had no right to enter upon a man's property because they thought they were doing him good, and the appeal would therefore be dismissed with costs.

Lords Justices BRETT and COTTON concurred. *Stocker v. The Planet Building Society*, 1877 ; (not reported).

156. *Covenant to build and keep in repair—Covenant not running with rent—Claim against assignee with notice.*—(1.) A plot of land was conveyed subject to a rent charge, the grantee, for himself, his heirs, executors, and administrators, covenanting with the grantor, his heirs and assigns, that he, the grantee, his heirs or assigns, "will erect within two years from the date of these presents, and at all times thereafter, keep in good and tenantable repair and condition, and from time to time when necessary will build upon the said plot of land, such good and substantial messuages or other buildings as shall be of the annual letting value of at

least double the amount of the rent-charge limited in respect of such plot."

*Plaintiff*, assignee of the grantor, sued the defendants who were mortgagees in possession to an assignee of the grantee, for breaches of the above covenant, claiming damages, and that the defendants be restrained from further breaches of the said covenant, and be compelled specifically to perform the same on the ground that they became assignees with notice of the said covenant.

*Held*, that the covenant did not run with the rent so as to make the defendants liable at common law, and that it was not a covenant which could be enforced in equity against the assignees with notice.

(2.) The following are the leading details of the case :—

Action brought against the defendants, a building society, which was the mortgagee of certain land, upon a covenant to build and keep in repair houses erected on the land. By an indenture dated May 17, 1866, made between C. J. and E. J., C. J. granted a plot of land to E. J. to the use that E. J. should pay C. J. an annual chief rent of 11*l.*, and E. J. for himself, his heirs, executors, administrators, and assigns, covenanted with C. J., his executors and assigns, that E. J., his heirs and assigns, would pay C. J. his heirs and assigns, this rent half-yearly, and would erect and keep in good repair, and, when necessary, rebuild messuages on the land of the value of double the rent. On March 2, 1867, C. J. conveyed to H., the plaintiff, to the use of H., his heirs and assigns, the said chief rent and all powers and remedies in respect thereof, together with the benefit of the said covenants. E. J. assigned his interest to W. M'A., who, by a deed of September 8, 1871, mortgaged the premises in question to certain persons, described as the trustees of the Brunswick Permanent Benefit Building Society, in fee, subject to the rent-charge and covenants above-mentioned.

The building society was afterwards incorporated under the Building Societies Act, 1874, and under the mortgage deed took possession, it was said, of the land and the buildings upon it. It was admitted on the one hand that buildings of the stipulated value had been erected upon the land, and, on the other

that they had not been kept in repair ; and the question argued at the trial, which took place before STEPHEN, J., without a jury, was whether, under the circumstances already stated, the defendants were liable upon the covenant to keep the buildings in repair. STEPHEN, J., having given judgment in favour of the plaintiff, the defendants appealed.

BRETT, L. J., in giving judgment, said : “ I am of opinion that this appeal should be allowed. In the first place, I have a very clear opinion that the action could not be maintained in common law. It is obvious that such a covenant as this could not run with the rent. Even allowing the case of *Milnes v. Branch*, (5 M. & S. 411), to stand, I think the proper and fair way to treat it is from the time when the judgment was given until now. Even Lord St. LEONARDS, who somewhat criticises it, takes it and assumes that it was the decision. I confess I do not see any reason why one should overrule *Milnes v. Branch*, (*sup.*) ; and, therefore, both on authority and principle, I think this covenant could not run with the rent. I am myself of opinion that it is not a covenant which could run with land. It is a collateral covenant ; therefore it seems to me clear that this action could not be supported by virtue of common law.

“ That reduces the case to this—whether this action and judgment can be supported upon any equitable doctrine. Now, the equitable doctrine seems to me to have been brought to a focus, and to have been declared as in the case of *Tulk v. Moxhay*, (2 Phillips 774) ; and that is the great leading authority upon this part of equitable doctrine. It seems to me that what was there decided was that an assignee of property, taking it with notice of a certain class of covenants, is, by reason of that notice, to be bound so that the Court of Equity would oblige him to observe such a covenant.

“ The question is, what is the sort of covenant which, according to that case, the Court of Equity will in

consequence of the notice, enforce against the assignee. Now, it seems to me that all that has been determined in equity is this—that if a person takes an assignment of land with notice of a covenant which restricts the mode of using that land in favour of other persons, the court will enforce, as against him, the observance of such restrictive covenant. It may be—but I think it not necessary to decide in this case—that the Court of Equity would go further than to enforce as against such an assignee with notice, a covenant which might strictly be called a covenant restricting the mode of using the land, and that they might enforce a covenant taken with notice, which might come within this proposition, a covenant which would be such a burden on the land as could be enforced against the land.

“It may be they would go that length; but it seems to me that it is not absolutely necessary to decide that. It appears to me obvious that the covenant in the present case to repair and keep in repair is not a covenant which restricts the mode of using the land, and if the other doctrine were true, it is not a covenant which would be a burden on the land, which would be enforced as against the land; therefore it would be within neither of the propositions, and a Court of Equity would not enforce this covenant unless it could go further than either of the propositions—enforcing either class of covenants which I have enumerated. Now it is admitted that there is no case which can be found in any of the books—no decision by any court which has ever gone beyond the class of covenants which I have enunciated; yet I cannot help thinking that if the Court of Equity had been prepared to go further, such cases must have arisen.

“The argument most strongly in favour of supporting this case upon equitable doctrines which has been used before us, seems to me to be this: that the reason why the Court of Equity did not go further was that they

would, in covenants such as this which is now under discussion, be making a mandatory injunction to do a certain thing, and that at that time, and until lately, the Court of Equity refused to make such a mandatory injunction.

“ But it is further alleged by the argument that that restriction of the exercise of its power by the Court of Equity is now no longer in force, and that, therefore, the doctrine might embrace all classes of covenants, and even this. The difficulty which the Court of Equity felt before as to the form of its proceedings being gone, it would now entertain and exercise the power of enforcing such covenants as this. That seemed to me to be an argument for the time strongly in favour of the respondent in this case; but I cannot help thinking that if we attempted to enlarge the equitable doctrine laid down in *Tulk v. Moxhay*, (*sup.*), we should not be enforcing an equity which is recognised and acknowledged, but would be making a new equity, which, I think, this court has no power to do.

“ It seems to me that not only does the enunciation of the doctrine by Lord COTTENHAM and by the Master of the Rolls in *Tulk v. Moxhay*, (*sup.*), confine the principle to cases of restrictive covenants, and perhaps to the sort of covenant which has been enunciated; but the case of *Cox v. Bishop*, (8 De G. M. & G. 815), is a case in which the Court of Equity refused to recognise the doctrine for which the respondents now argue; and if we were to uphold that doctrine now, we should have to overrule the decision of *Cox v. Bishop*, (*sup.*), and say that that was a wrong decision.

“ It is said, as against that view, that this judgment of ours must inevitably overrule the decision of Vice-Chancellor MALINS, in the case of *Cooke v. Chilcott*, (84 L. T. (N. S.) 207; L. R. 3 Ch. D. 694). I should be sorry if we were obliged positively to overrule the decision of Vice-Chancellor MALINS, because I



should like to say for myself that I have never seen a judgment of that learned judge, given upon deliberation, which did not seem to me to be a judgment founded upon an intense desire to do that which was just between parties, and to uphold doctrines which recommend themselves, in my view, as doctrines of large and substantial justice. But I cannot help thinking that, in the case of *Cooke v. Chilcott*, (*sup.*), he really decided the point from the view that the covenant ran with the land, and that he did not presume really to give any decision on the equitable doctrine now propounded.

“ I think his judgment, if it is to be taken as holding that the covenant in that case ran with the land is a doctrine that cannot be supported. But then, when we come to the Court of Error—whose decision in that case would bind us—it seems very difficult to find out what is the ground of their decision ; because I am rather inclined to think that it was a decision given upon an admission of liability, and, therefore, decidedly nothing in the law at all.

“ I am inclined to think that we are not over-ruling any decision of an equitable doctrine by the Vice-Chancellor ; but if it is to be taken that this decision really did determine an equitable doctrine, and to say that the Court of Equity would enforce a collateral covenant which otherwise would only bind the covenantee personally and not by the land—if he decided that an assignee of the land or of the estate in the land with notice of such a covenant—that which is usually called a collateral and personal covenant—should be bound by that covenant, I think, then, he would have gone beyond any authority in any Court of Equity and should not be bound by his decision. Therefore I am of opinion that this appeal should be allowed on the ground that this is a collateral covenant, and that even although the collateral covenant is not restrictive, and even although the defendant took with notice, that he is not bound by this covenant.”

COTTON and LINDLEY, L. JJ., concurred.

*Haywood v. Brunswick Building Society*, December, 1881, Ct. of App. (BRETT, COTTON, and LINDLEY, L. JJ.) 30 W. R. 299 ; 45 L. T. (N. S.) 699. (STEPHEN, J., reversed).

### REPEALED ACTS.

157. By the repeal of the Building Societies' Act, 1886 (6 & 7 Will. 4, c. 32), the provisions of the old Friendly Societies' Acts (10 Geo. 4, c. 56, and 4 & 5 Will. 4, c. 40), which applied to building societies, so far as they could be made applicable, were also repealed for building societies, on their becoming incorporated. As regards friendly societies they were repealed by 18 & 19 Vict. c. 68. As regards benefit building societies, not incorporated, they are still in force by virtue of the Building Societies Act, 1875.

158. *Inland Revenue Act*, 1868.—Sect. 41 of the Act 37 & 38 Vict. c. 42, which excludes building society mortgages from the exemption from stamp duty, virtually repeals thereby so far as regards incorporated societies, the provision in sect. 11 of 31 & 32 Vict. c. 124, which restricted the exemption to mortgages by members to the society not exceeding five hundred pounds.

See also ACTS, STAMP DUTY.

### RESOLUTION.

159. *Not signed in accordance with the Rules is not necessarily invalid.*—A rule declared that "the minutes of the managers entered in the minute book, and signed by the managers concurring therein, shall be sufficient authority for the execution" of certain powers :

*Held* (by BLACKBURN, MELLOR, and SHEE, JJ.), that the omission of the managers to sign in conformity with

the rule did not invalidate their execution of the powers entrusted to them.

BLACKBURN, J.—“The rule does not say, by any means, that the exercise of the powers of the managers shall be void, unless the same be reduced to writing and all signed . . . The only effect of the rule is that the minutes, when signed, shall be sufficient authority for the execution of any of the said powers.”

*Priestly v. Hopwood*, 1864; 10 L. T. Rep. (N. S.) 646.

### RESTRAINT OF TRADE.

160. *Covenant to have exclusive right of supplying beer does not act as—Negative stipulation.*—The plaintiff, a brewer, sold a piece of land to the trustees of a freehold land society, who covenanted with him that he, his heirs, and assigns, should have the exclusive right of supplying beer to any public-house erected on the land, but the plaintiff did not enter into any covenant to supply it.

The defendant, a member of the society, who was also a brewer acquired a portion of the land with notice of the covenant, and erected on it a public-house, which he supplied with his own beer. The plaintiff filed his bill to restrain the defendant from supplying beer, alleging that the plaintiff had always been ready to furnish a sufficient supply of good beer at a fair price :

*Held* (affirming the order of STUART, V.-C., overruling a demurrer, 20 L. T. Rep. (N.S.) 551), that the covenant was not void either for uncertainty or want of mutuality, or as being an unreasonable restraint of trade, or because it purported to be perpetual, and that though it was in terms positive, it was in substance negative, and that the court could interfere by injunction to restrain the defendant from acting in contravention of it. *Observations on Hills v. Croll* (2 Ph. 60) : *Cutt v. Tourle*, 1869; L. R. 4 Ch. Ap. 654.

## RULES.

161. *Under the Building Societies Act, 1874.*—The persons intending to establish a society must transmit to the registrar two copies of the rules, signed by three of them, and by the intended secretary or other officer; and the registrar, if he finds that the rules are in conformity with the Act, is to return one copy, with a certificate of incorporation, and to retain and register the other. 37 & 38 Vict. c. 42, s. 17.

162. *The matters which must be set forth in the rules* are stated in fourteen sub-sections of sect. 16 of the Act.

163. *A charge not exceeding one shilling* may be made for every complete printed copy of rules, which the society is to supply to any person requiring the same, with a copy of the certificate of incorporation appended thereto. 37 & 38 Vict. c. 42, s. 17.

164. *The rules of a subsisting society*, which have been certified under 6 & 7 Will. 4, c. 32, are, upon its obtaining a certificate of incorporation, so far as they are not contrary to any express provisions of the Building Societies Act, 1874, to continue in force until altered or rescinded. 38 & 39 Vict. c. 9, s. 2.

165. *Evidence of registration.*—A printed copy of the rules certified by the secretary or other officer to be a true copy of its registered rules, is, in the absence of evidence to the contrary, to be received as evidence of the rules. 37 & 38 Vict. c. 42, s. 20. But it has been held that a similar provision in 10 Geo. 4, c. 56, s. 8 (to the effect that an examined and approved copy of the transcript of rules deposited with the clerk of the peace should be evidence of the rules in all cases), meant that the whole of the copy must be examined and proved, and not a particular rule only: *Reg. v. Boynes*, 1843; 1 Car. & K. 65.

166. A rule, *forfeiting shares* after six months' neglect to pay, is not unreasonable: *Card v. Carr*, 1856; 1 C. B. (N.S.) 197; 26 L. J. 118 C. P. See FORFEITURE.

167. A rule providing how "*Summonses, Circulars, and Notices*," should be sent, relates only to the ordinary business of the society, and not to proceedings in arbitration: *Hilton v. Hill*, 1863; 9 L. T. (N.S.) 383.

168. *The rules are binding* on the several members and officers, and on all persons claiming on account of a member, or under the rules, all of whom will be deemed to have full notice thereof. 37 & 38 Vict. c. 42, s. 21.

169. *Alteration of rules, in case of societies certified previously to the 2nd November, 1874*, may be made by the vote of three-fourths of the members present at a special meeting called for the purpose, of which meeting notice, specifying the proposed alteration, rescission, or addition, is to be given to the members, in such manner as the rules provide, or, in the absence of such provision, by letters sent through the post seven days previous to such meeting. 37 & 38 Vict. c. 42, s. 18.

170. *Alteration of rules, in case of societies established under the Building Societies Act, 1874*.—Any alteration or rescission of any rule, or additional rule, may be made in the manner directed by the rules (s. 18), and such manner is one of the matters to be set forth in the rules. 37 & 38 Vict. c. 42, s. 16.

171. *Copies of alterations to be sent to the registrar*.—Every society under the Building Societies Act, 1874, is to forward to the registrar two copies of every resolution for rescission of a rule, and of every alteration of, or addition to its rules, signed by three members and the secretary, and a statutory declaration of an officer of the society that the provisions of sect. 18 of

the Act have been complied with. 37 & 38 Vict. c. 42, s. 18.

*The form of statutory declarations is prescribed by the Secretary of State's Regulations. (infra.)*

172. *The meeting summoned to alter rules must be held at the registered office—Mandamus against registrar.*—Upon application for a rule for a *mandamus* to the registrar to certify the new rules of a friendly society, the registered place of meeting of which was at Liverpool, but which had held the meeting for altering the rules at Manchester, the registrar stated that he refused, because he was of opinion that, until the place of meeting of the society was by a resolution of the society at a proper meeting called for that purpose, changed from Liverpool, no meeting of the society elsewhere than in Liverpool could, conformably with the law, make new or alter the existing rules of the society, and that in the notice convening the meeting and the rules passed there, divers matters seemed to him in point of law objectionable, and he referred to them: *Held*, that an alteration in the place of meeting could only be made at a meeting of the society legally convened, and, therefore, the rules made at the meeting summoned by the president and secretary at Manchester were void, and *mandamus* refused: *Reg. v. J. Tidd Pratt, Esq.*, 6 B. & S. 672.

173. *Effect of certificate on improperly altered rules.*—It has been held that the barrister's certificate [which corresponds to the registrar's, under 37 & 38 Vict. c. 42], is conclusive [so far as it can be, see *infra*, Art. 174], as to the validity of new or altered rules, even though the rule of the society as to the manner of making new rules has not in fact been complied with.

CAMPBELL, C. J. (for himself, COLERIDGE and WIGHTMAN, JJ.):—"The plaintiff's counsel entirely failed in his attempt to show that the barrister is to inquire into the regularity of making the rules, so that his certificate is to be a judicial determination of the matter. No such function is vested in him." His lord-

ship proceeded to point out the great inconvenience which would arise, if, after the rules had been certified, confirmed, and acted upon, it were competent to any refractory member, at any distance of time, to object that the proper notice was not given of the meeting at which they were agreed to, or that there were not a sufficient number of members present, or that the votes had not been accurately counted upon a division; and said that a remedy was open to any such member to move the repeal or modification of a rule irregularly made, and, if there were a majority of the society who agreed with him, the wrong would be redressed.

ERLE, J., dissented from the decision of the court, on the ground that the view taken seemed to him contrary to the words "that all rules," when certified, "shall be binding," and to render the word "rules" of no effect, for it made that to be a rule which was no rule, and to be binding, if it was certified. He said it was also inconsistent with the declared purpose of the certificate, which was to ascertain the legal *tendency* of the supposed rules, and not to inquire into the validity of making them.

*Dewhurst v. Clarkson*, 1854; 3 Ell. & B. 194.

174. *How far the registrar's certificate is conclusive as to the legality of a rule.*

"It is said that this rule was certified by Mr. Tidd Pratt, and all rules so allowed are binding upon the society, and the 4th sect. of 6 & 7 Will. 4, c. 32, is conclusive on that subject. By that it is enacted that all rules and alterations of rules for the management of such societies from the time of the certificate shall be binding on the members and officers, and all other persons having an interest therein. It is then said that the certificate is conclusive, and, therefore, the plaintiff is not at liberty, and cannot sustain any claim as to the invalidity of this rule. But authorities have been cited on the other side, which oblige me to come to the conclusion that that is not so. Although it is true that *Dewhurst v. Clarkson* (3 Ell. & Bl. 194) decided that the certificate is conclusive, two authorities show the contrary—*Kelsall v. Taylor* (11 Ex. 513), and *Reg. v. Davis* (13 L. T. Rep. (N.S.) 629)—where it was held that the certificate is only conclusive as to matters within the barrister's jurisdiction, and will not give validity to a rule repugnant to the objects of the society, in strict conformity with the Act . . . It is settled by the two cases cited that the certificate is not final, and cannot give legality to that which is illegal otherwise." Per MALINS, V. C., in *Laing v. Reed*, 1869; 21 L. T. Rep. (N.S.) 83.

This opinion was confirmed on appeal by the Lord Chancellor (HATHERLEY) who said: "It could not be contended, and it hardly

was contended, that if the matter was plainly *ultra vires*, any certificate of the barrister could prevent the court from interfering so as to prevent an abuse of power on the part of persons who have certain privileges conferred on them by parliament. If there were such an abuse of power the certificate of the barrister would have no effect whatever. The words which render him competent to decide upon the legality of the instruments submitted to him, clearly do not apply to such a case as that before us. They probably apply to regulations affecting the engagements between the members themselves; such, for instance, as in what cases the majority might bind the minority. But if the law prohibited the raising of these sums of money, I apprehend that no certificate of the barrister could avail."

GIFFARD, L. J.—"The certificate is not conclusive where the rule is either contrary to the general law, or repugnant to the express provisions of the Act; and I take it that the rule would be repugnant to the express provisions of the Act if it were a rule which made the society different from that which is specified in the Act and meant by the Act: L. R. 5 Ch. Ap. 4; 39 L. J. 1, Ch.

175. *Effect of alterations on withdrawing members.*—Members under notice of withdrawal would probably not be bound by alterations subsequently made: *Per Wood, V.-C., Armitage v. Walker*, 1855, 2 K. & Johns. 211; 2 Jur. (n.s.) 13; 20 J. P. 58; 26 L. T. Rep. 182.

### SALE.

176. *Mortgage—Failure to pay interest—Notice.*—In a deed of mortgage to a building society the mortgagor agreed that, in default of payment of interest for seven days after notice, the mortgagee should have an absolute power of sale. Default was made and notice given. On the sixth day the interest due was reduced by a payment on account, and a bill of exchange accepted by the mortgagor for the remainder. The bill was dishonoured.

*Held*, by LUSH, J., that it was not necessary for the mortgagee to give a second notice, but that the power of sale revived immediately upon the bill being dishonoured.

*Wood v. Murton*, 1877 (LUSH, J.); 37 L. T. (n.s.) 788.



177. *Sale—Power of sale without notice.*—(See also MORTGAGE, REDEMPTION).

In another case where the application of the power of sale had been restrained by MALINS, V.-C., the Court of Appeal discharged the order.

JESSEL, M. R., said he was quite unable to discover the "equity" under which the order was made. "He very much disapproved of the mode in which the original order was obtained, but it was too late for the defendant to appeal against that order, and therefore it was not incumbent upon him to say why he disapproved of it. The plaintiffs were mortgagors under a mortgage made with a building society. It was not asserted that the terms as regards interest and fines required by the society were oppressive or unreasonable, but it was alleged that the mortgage itself was oppressive, independently of the terms, and the suggestion made was, it was so oppressive that that alone would give an equity to interfere. He could not find anything of the kind in it.

"He was not aware of the equity as to oppression—it was new to him entirely. The suggestion made was, that a *Power of Sale without Notice* on the defendants was in itself oppressive. He was not of that opinion. The person who made the default had ample notice, because it was his own act, and he could always avoid the sale by paying the money. But there was nothing either oppressive or unreasonable in selling property pledged as security for a sum of money: it was the ordinary mode of realising the security, and, indeed, in most countries the only mode. He could not, therefore, accede to that argument.

"There was no offer on the part of the plaintiff to pay the sum due on the mortgage. He could not understand how they could stop the mortgagee from selling without offering to pay what was due to him. Of course, if he claimed more than was absolutely due, the court was in the habit of protecting the mortgagor, on his paying the sum into court or taking some

security for repayment, but it could not at the same time prevent a mortgagee realising his security and not give him the money admittedly due to him.

“In this case, all the instalments became due on default being made, and although the society offered to take something less, the court had no right to alter the bargain in any shape or way. The bargain was made between persons of full age, and competent to understand its terms: it was not a bargain improperly obtained, and indeed, the bargain itself was not sought to be impeached. That being so, there was no equity which he was aware of to interfere with the rights of the parties as settled by the contract, and the order of the Vice-Chancellor must be discharged with costs.”

COTTON, L. J., was also of opinion that the order of MALINS, V.-C., could not be sustained. “The only argument in support of it was that, because the plaintiff had got the money upon what he thought a hard bargain, the court ought to prevent the persons from whom he had got it from enforcing their security. It would be most unfortunate if the court were to assume any such jurisdiction. The plaintiff did not even ask to be relieved from his bargain: on the contrary, he offered to redeem. The clearly settled principle of the court was not to interfere with the right of a mortgagee to exercise the powers given to him by his mortgage-deed unless the plaintiff was ready to pay him what was due under that deed.”

THESIGER, L. J., concurred, observing “That it had been suggested that there was something in the nature of the relations between a building society and a borrower from them which raised an equity to support the injunction. He knew of neither principle nor authority for so holding.”

*Bazenal v. The Liberator, &c., Building Society*, April, 1878, Court of App. (JESSEL, M. R., COTTON and

THESIGER, L. JJ.) ; (not reported), MALINS, V.-C., reversed.

See also the decision to the same effect in *Day v. Good*, 1880, Ct. of App. (JESSEL, M. R., JAMES and COTTON, L. JJ.), W. N. 1880, p. 98.

*Power of sale—Exercised bonâ fide.*—The plaintiff borrowed 3,500*l.* from a building society on the security of his interest under an Agreement for a Building Lease, and the unfinished buildings erected in pursuance of such agreement.

In erecting such buildings the plaintiff had encroached upon the land of an adjoining owner, and in consequence his landlord refused to grant him a lease in pursuance of the agreement until he could purchase the land on which he had so encroached.

During the negotiations for this purpose the Building Society sold the property under their power of sale for 5,500*l.*

This was an action to set aside the sale as made at an improper time and for an undervalue.

*Held*, that, if the mortgagee exercised his power of sale without corruption or collusion for the *bonâ fide* purpose of realizing his security, the court will not interfere unless the price be so low as to be evidence of fraud. “It has been long established that a mortgagee is not a trustee for the mortgagor, except as to the surplus of the purchase-money after a sale, and a sale would not be set aside unless it was fraudulent or for a gross undervalue.”

*Warner v. Jacob*, March, 1882, KAY, J.; W. N. 1882, p. 37.

## SEAL.

178. *Under the Building Societies Act, 1874.*—Every society upon receiving a certificate of incorporation becomes a body corporate, and has a common seal (sect. 9), which is in all cases to bear the society's

registered name; and provision must be made in the rules for the device, custody, and use of the seal. 37 & 38 Vict. c. 42, s. 16.

179. *Receipts endorsed on mortgages* are to be under the seal of the society, countersigned by the secretary or manager; and the form of receipt to be used, which is specified in the schedule to the Act, directs that the seal be affixed by order of the board of directors (or committee of management), and suggests that it be in the presence of other witnesses, to be required by the rules. 37 & 38 Vict. c. 42, and schedule.

### SECRETARY.

180. *Is an officer of the society*, and the manner of appointing, remunerating, or removing him must be set forth in the rules; he is to sign the copies of rules sent to the registrar for registration; and to prepare annual or more frequent accounts; he (or the manager) is to countersign the receipts under the seal of the society endorsed on discharged mortgages. 37 & 38 Vict. c. 42, ss. 16, 17, 40, 42.

181. *He is to give security* in the manner provided by sect. 23 of 37 & 38 Vict. c. 42, if he has the receipt or charge of any money belonging to the society, before taking upon himself the execution of his office.

182. *Personal liability of.*—He should take care how he signs promissory notes on behalf of the society, if the rules are not in conformity with the provisions of 37 & 38 Vict. c. 42, with respect to the borrowing of money.

*Bottomley v. Fisher*, 1862, 1 H. & C. 211; 31 L. J. 417, Ex.; 6 L. T. (N. S.) 688; was a case where the secretary was held personally liable on a promissory note signed (not countersigned) by him as secretary.

See also PROMISSORY NOTES.

183. *Orders for necessary repairs* given by the secretary may bind the society, though not sanctioned by the committee, nor entered on the minutes: *Allard v. Bourne*, 1868; 15 C. B. (N.S.) 468.

184. *He is a servant and may be indicted for embezzlement.* See EMBEZZLEMENT.

### SHARES.

185. *Under the Building Societies Act, 1874*, may be issued of one or more denominations, either paid up in full or to be paid by periodical or other subscriptions, and with or without accumulating interest. 37 & 38 Vict. c. 42, s. 13. By the repeal of 6 & 7 Will. 4, c. 32, the restriction is removed as to the amount of each share, and of the monthly subscriptions thereon.

186. *The rules must set forth the terms upon which paid-up shares (if any) are to be issued and repaid, and whether preferential shares are to be issued, and, if so, within what limits, if any.* 37 & 38 Vict. c. 42, s. 16.

187. *Two or more persons may jointly hold a share or shares.* See JOINT MEMBERSHIP.

SOCIETIES established before 2nd November, 1874.

See ACTS.

„ may be incorporated. See CERTIFICATE OF INCORPORATION.

„ to render accounts by their secretary. See ACCOUNTS.

### SOLICITOR.

188. *Negligence on his part, when a bar to an action for costs.*—Mere negligence on the part of the solicitor, except when his labour has been wholly useless, is

no defence to an action for his costs. (*Templar v. McLachlan*, 1806 ; 2 B. & P.'s New R. 136). But it is a good defence that, through his negligence, no benefit has been derived from his work and labour, and that he has shown a want of fair professional skill in the transaction (*Huntley v. Bulwer*, 1839 ; 6 Bing. N. C. 111) ; and he cannot recover items incurred for useless work.

“ No principle of law is more clearly established than this, that a party cannot enforce a charge for doing business which is useless to his employer :” TINDAL, C. J., in *Shaw v. Arden*, 1832 ; 9 Bing. 287.

He may be liable to an action for damage sustained in consequence of his negligence (*Russell v. Palmer*, 1767, 2 Wils. 325 ; but see *Pitt v. Yalden*, 1767 ; 4 Bur. 2060) ; although he is not answerable for error in judgment upon new, difficult, or doubtful points : *Godefroy v. Dalton*, 1830 ; 6 Bing. 460 ; *Elkington v. Holland*, 842, 9 M. & W. 659 ; 11 L. J. 274 Ex.

189. *In dealing with title deeds* he should fully examine the title to the property offered on mortgage to the society, and not rely on a mere extract (*Wilson v. Tucker*, 1822, 3 Star. 154), for he is bound not to draw wrong conclusions from the deeds submitted to him (*Ireson v. Pearman*, 1825, 3 B. & C. 799), and should the society sustain any loss through his inaptitude or carelessness, he may be liable to make good the deficiency.

A case was tried at the Liverpool Assizes in 1842, in which the trustees of a benefit building society recovered from the defendants, who were the solicitors employed in preparing the mortgage deed to the society, the sum of one thousand three hundred and fifty pounds lent to a shareholder. The defendants had given a certificate to the society of their approval of the title of the borrower to the property intended to be mortgaged, but they neglected to secure the assignment of an outstanding term. Subsequently the borrower effected a second mortgage with different parties, who got the outstanding term assigned to them, and so secured a priority over the first mortgagees. The

counsel for the building society stated, in his address to the jury, referring to the profession of a solicitor, that "no profession was of more importance to society—none exercised a wider influence. Every man's property was at their mercy, and on their skill and integrity every one relied : " *Neilson v. Currie*, reported "Times" newspaper, 12th April, 1842.

### STAMP DUTY.

190. *Under the Building Societies Act, 1874*, no rules, nor any copy thereof, nor any power, warrant, or letter of attorney granted by any person as trustee for the society for the transfer of any share in the public funds standing in his name, nor any transfer of any share nor any bond or other security given to or on account of the society, or by any officer thereof, nor any order on any officer for the payment of money to any member, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever, required or authorized to be given, issued, signed, made, or produced in pursuance of the Act, or of the society's rules is liable to stamp duty. 37 & 38 Vict. c. 42, s. 41.

191. But *mortgages* are not exempt from stamp duty (a) 37 & 38 Vict. c. 42, s. 41.

192. *The receipts exempt from duty are ;—*

- (a) Receipts for dividends in public funds or interest of exchequer bills ;
- (b) Receipt, or any entry in a book of receipt, for money deposited in the funds of the society ;
- (c) Receipt for money received by a member (his executors, administrators, assigns, or attorneys) from the funds of the society. 37 & 38 Vict. c. 42, s. 41.

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(a) Existing societies under the Act of 1836, which remain unincorporated, are entitled to exemption from stamp duty on mortgages not exceeding 500*l*.

193. *As to other exemptions—What is meant by “Bond” or “Security.”*—A deed transferring to the trustees of a friendly society a mortgage for one thousand one hundred pounds (the transfer containing a declaration that the money was advanced out of the funds of the society), was held by the Court of Exchequer not to come within the meaning of the words of 18 & 19 Vict. c. 63, s. 37, “any bond to be given to or on account of any such society,” nor to be “a document required or authorized by the Act or the rules of the society,” so as to be exempt from stamp duty under that section.

KELLY, C. B., in delivering judgment, said :—“The Act exempts from duty all documents required or authorized by the rules of the society, and no doubt the society, by its rules, authorizes the trustees to invest the funds in mortgages of real estate. But the question is whether, looking at the whole of sect. 37, it only exempts documents required or authorized for the purpose of carrying on the internal affairs of the society, or required or authorized for the purpose of bringing the society into a position to carry on business with the outside world, or whether it also exempts all documents which may become necessary in the course of carrying out that business. We should have expected very express and specific language if it had been intended to exempt securities to so large an amount as, on this view, the statute would include. But, on the contrary, when we read the earlier part of the section, we find that the instruments there enumerated all relate to matters of a comparatively small amount, and are of the character I have mentioned; and the general words must be construed by reference to the particular terms which precede them, and must be taken to refer to matters *ejusdem generis* with them. . . . What the legislature meant was to exempt transactions relating to small sums and to official acts, and the conduct of internal business; they, therefore left out the words ‘nor other security’ for the purpose of confining the exemption to bonds, and to such bonds as are required in the administration of the society’s affairs. If the transfer of a mortgage to the society is exempt, it is impossible to exclude from the exemption the case of an original mortgage to them, where, by universal usage, the duty, with the other costs of conveyance, is to be paid, not by them, but by the mortgagor. It is impossible, without clear words, to suppose that the legislature can have done anything so mischievous or so contrary to equity as to extend exceptional privileges not only to the society, but to all those who deal with it.”



MARTIN, B., said: "I am of the same opinion. It is obvious, both from 10 Geo. 4, c. 56, and 18 & 19 Vict. c. 63, that the object of the legislature was to relieve these societies and their members from stamp duty in respect of documents immediately connected with the society. . . . But my impression is that it was never intended that strangers borrowing money of such societies should be put in a different position from other persons. . . . Moreover, I think that the words 'nor other security' are omitted for the very purpose of preventing this question arising. The Court of Common Pleas had thought that mortgages were within the terms of the previous Act (*Walker v. Giles*, 6 C. B. 662), and it is clear that the words they relied on were these very words which are now left out.

"Further my impression is that the word 'bond' which occurs in both the earlier and the present section, refers, not to a loan or investment of the society's funds in or upon bonds, such as the Harbour Bonds of the Mersey Docks, but to bonds given (a), whether with or without securities, by clerks, agents to receive money, and others, as security for their duly accounting or otherwise discharging the functions of their office. That I think, also was the nature of the 'security' mentioned in the earlier Act; but a more extensive meaning having been attributed to it, the word was afterwards omitted. Then the question comes to this, whether the words in the latter part of the section, read in conjunction with the instruments previously enumerated, when bonds are mentioned but securities are omitted, are not to be confined to instruments *ejusdem generis*. I concur in thinking that they are, and that this mortgage was not within the meaning of the section."

PIGOTT, B., concurred.

*The Trustees of the Royal Liver Friendly Society*, Apprs.; *The Commissioners of Inland Revenue*, Resps. 1870; L. R. 5 Ex. 78; 18 W. R. 349 (b).

194. *Whether drafts or orders in the form of ordinary cheques require a stamp*—By the practice of a building society, members holding completed shares were allowed to withdraw only whole shares, but members holding uncompleted shares were allowed to

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(a) See on this *Carter v. Bond*, 4 Esp. 235.

(b) The interpretation, however, put by the Court (especially MARTIN, B.) on the words "bond" and "security," although *obiter dictum*, would be equally applicable to the same words as used in sect. 41 of the Building Societies Act, 1874.

withdraw the whole or any part of the money standing to the account of the shares. Interest was paid half-yearly on completed shares, but not on uncompleted shares. The mode of withdrawing shares, whether completed or uncompleted, was by the member giving notice of withdrawal, upon which he was furnished with a form of request for a draft, on the receipt of which request, signed by him, a draft for the amount was forwarded to him, made payable to bearer. The drafts were usually paid within a week of the notice to withdraw. Drafts payable to bearer were forwarded half-yearly to the holders of completed shares, in respect of the interest due on the shares without any previous request.

The Court of Exchequer (KELLY, C. B., CHANNELL, and PIGOTT, BB.) *held* that such drafts were liable to stamp duty, not being within the protection of 6 & 7 Will. 4, c. 32, s. 4, and 10 Geo. 4, c. 56, s. 37.

KELLY, C. B. "The question is whether the instruments before us, which are, in form, ordinary cheques, require a stamp. They certainly do, unless the circumstances under which they are drawn exempt them from duty under some express legislative enactment. The section of the Act (10 Geo. 4, c. 56) which is relied upon is sect. 37 (a), which contains among the list of exempted instruments 'draft or order;' it is necessary, therefore, to inquire what sort of drafts and orders are contemplated by the section. They must be drafts or orders 'required or authorized to be given, issued, signed, made, or produced, in pursuance of' the Act; and I think these words limit the drafts and orders mentioned to such as are drawn by *an officer of the society for its purposes, or by a member upon the society payable to himself only*. . . . This is clearly a *banking transaction* and not a transaction within the operations either of a benefit building society or a friendly society."

*Attorney-General v. Gilpin and others*, 1871; L. R. 6 Ex. 198.

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(a) Section 37 of the statute 10 Geo. 4, c. 56, is very similar to sect. 41 of 37 & 38 Vict. c. 42, but the word "draft," which was amongst the instruments exempted from duty by the former Act, is omitted in 37 & 38 Vict. c. 42, s. 41, which expressly declares that the "order" must be one on an officer for the payment of money to a member.

195. *A receipt for rent held liable to duty.*—A mortgagor having made default in his payments under the mortgage deed to the trustees, they, in pursuance of the powers contained in the deed, entered into the possession and into the receipt of the rents and profits of the mortgaged premises, and whilst in such possession, and whilst the mortgage deed was in force and unsatisfied, Mr. Knight, who occupied the premises as tenant to the mortgagor, paid to the defendant, as secretary to the society, the sum of twelve pounds for rent of the premises, and the defendant thereupon gave him an unstamped receipt for the same in the following form: "*Temperance Land and Building Society (enrolled as the Temperance Benefit Building Society). No. 2,677.—4, Ludgate Hill, London. 15th Oct., 1870. Received of Mr. G. C. Knight, twelve pounds rent of premises, Barnhove Cottage, East Moulsey, due Michaelmas, 1870. For the trustees of the society, Henry J. Phillips, Secretary.*"

The Court of Exchequer (KELLY, C. B., MARTIN, BRAMWELL, and CLEASBY, BB.) held that the receipt in question was liable to and required a stamp. It did not come within any of the several classes of documents exempted from stamp duty by sect. 37 of 10 Geo. 4, c. 56, but was to all intents a document given as between landlord and tenant, in pursuance of a contract between them, and by the express terms of the document itself was stated to be a receipt for rent received by the landlord.

KELLY, C. B., said, it could not be contended under the Stamp Act that a receipt between landlord and tenant for a sum of money for rent, is not within the Stamp Act, and does not require a stamp. "This document has nothing in the world to do with the Act (6 & 7 Will. 4, c. 32, s. 4). It is a receipt given between landlord and tenant in pursuance of the contract which they had entered into, creating the tenancy between them, and in pursuance of that only. Under that contract the tenant is, at certain periods, liable to pay a certain amount of rent to his landlord; he has paid it in this case, not indeed to the landlord in person, but to somebody who has the authority of the landlord, whether in law or in fact, to receive it on his behalf,

and it is simply the case of a receipt between landlord and tenant, having nothing whatever to do with that section of this Act of parliament. But it has to do with the operation of the Stamp Act, and therefore I am of opinion that this document requires a receipt stamp."

MARTIN, B., was of the same opinion. The exemption ought to be read according to its plain and ordinary meaning, namely, that *those receipts are to be exempted from duty, which are given for money deposited belonging to the funds of the society*. He said that this was not a receipt for money deposited belonging to the funds of the society. The fact that the money *after it was paid* by the tenant was *deposited* in the funds of the society, did not at all affect the question.

*Attorney-General v. Phillips*, 1871 ; 24 L. T. Rep. (N. S.) 882.

STATUTORY DECLARATION, required to be made by officers, form of. See SECRETARY OF STATE'S REGULATIONS, *post*.

### SUBSCRIPTIONS.

196. A building society *can recover subscriptions* due from its members, even though it acts illegally as a freehold land society.

COCKBURN, C. J.—A society does not cease to exist because it does something which its rules do not warrant, and so long as it exists, the members are bound by the rules.

CROMPTON, BLACKBURN, and MELLOR, JJ., concurred.

*Reg. v. D' Eyncourt*, 1864 ; 4 B. & S. 820 ; 10 Jur. 513 ; 12 W. R. 408.

### SUIT.

197. *Instituted to annoy will not be heard*.—A bill, filed by a member of a building society on behalf of himself and the other members against the directors of the society, to restrain certain proceedings alleged to be *ultra vires*, was ordered to be taken off the file upon evidence that the plaintiff was a person of small means and had purchased one share in the society for the purpose of instituting the suit, and that the suit was really instituted by his solicitor, who was not a shareholder, for the purpose of annoying two of the directors : *Robson v. Dodds*, L. R. 8 Eq. 801.

*Suit for Redemption.* See MORTGAGE, REDEMPTION.

SUPERIOR COURTS, Jurisdiction of, ousted by 37 & 38 Vict. c. 42, s. 36, see DISPUTES.

SUPREME COURT of Judicature may decide on questions of law. See DISPUTES.

### SURPLUS FUNDS.

198. The *Purposes* to which the funds are to be applied and the *manner* in which they are to be invested must be set forth in the rules. 37 & 38 Vict. c. 42, s. 16.

199. *Mode of investment and definition of.*—The surplus funds, which are defined to be “any portion of the funds of the society not immediately required for its purposes” may be invested as follows:—

- (a) Upon real or leasehold securities.
- (b) In the public funds.
- (c) In or upon any parliamentary stock or securities.
- (d) In or upon any stock or securities, payment of the interest on which is guaranteed by authority of parliament.
- (e) In the case of *terminating* societies, with other societies under the Building Societies Acts. 37 & 38 Vict. c. 42, s. 25.

200. *Trustees may be appointed* for the purpose of investments in the public funds or upon security of copyhold or customary estate. 37 & 38 Vict. c. 42, s. 25.

201. *Land may be purchased.*—The surplus funds of a society not incorporated, may be invested in purchase of real estate, if the rules so provide. *Mullock v. Jenkins*, 1851; 14 Beav. 628; 21 L. J. 65, Ch. But a contract entered into by the directors of a benefit

building society for the purchase of land to a greater extent than the amount of the *bonâ fide* surplus funds was held to be a breach of trust, and the directors who authorized the payment of the money were held liable to replace the same, as having misapplied trust money: *Grimes v. Harrison*, 1859; before ROMILLY, M. R., 26 Beav. 485; 83 L. T. 115, Ch.; 28 L. J. 823, Ch.; 5 Jur. (N. S.) 528.

202. *May be lent to non-members.*—It has been decided that under 10 Geo. 4, c. 56, s. 13 (incorporated with 6 & 7 Will. 4, c. 82), a society may lend its surplus funds on real security to persons not members, and may lend surplus funds to members on security of property already in their possession (*Cutbill v. Kingdom*, 1847, 1 Ex. 494; 17 L. J. 177 Ex.; *Morrison v. Glover*, 1859, 4 Exch. 430; 19 L. J. 20 Ex.); and the statute 37 & 38 Vict. c. 42, imposes no restriction in this respect.

See also LAND, and CO-OPERATIVE LAND SOCIETIES.

## SURVEYOR.

203. *The surveyor is bound by the rules* as an officer of the society (37 & 38 Vict. c. 42, s. 21), and, therefore, has no remedy against individual directors if the rules provide that he shall look to the funds only for payment. This was decided before the passing of the Building Societies Act, 1874: *Alexander v. Worman*, 1860, 6 H. & N. 100; 30 L. J. 198 Ex.; 3 L. T. (N. S.) 477.

The manner of his *appointment, remuneration, and removal* must be set forth in the rules. See OFFICERS.

204. *Surveyor making an incorrect report.*—If the report of the surveyor be grossly incorrect, and the society sustain loss, he is not entitled to recover anything for the work and labour done and is liable to an

action for damages : *Money Penny v. Hartland*, 1824, 1 Car. & P. 352.

See also MEMBERSHIP

TAXATION of costs. See REDEMPTION.

## TENANCY.

205. *What is the effect of a tenancy clause in a Mortgage Deed.*—In *Walker v. Giles*, 1848, 6 C. B. 662 (per WILDE, C. J.) it was held that “the object and general contents of a mortgage deed are inconsistent with the intention of creating the relation of landlord and tenant.” But that decision has called forth some animadversion; and in more recent cases (*Pinhorn v. Souster*, 1853, 8 Exch. 763; *Brown v. Metropolitan Counties Assurance*, 1859, 4 H. & N. 428; 1 El. & El. 832), a tenancy has been held to have been created.

“The tenancy clause in a mortgage deed creates a rent, with all its incident remedies :” *Keech v. Hall*, 19 Geo. 3, 1 Smith L. C. 5th ed. 505; *Jolly v. Arbuthnot*, 1859, 4 De G. & J., 224.

It does not create such a tenancy as would give the county courts jurisdiction under the 122nd section of the County Courts Act, 9 & 10 Vict. c. 95 : *Jones v. Owen*, 1848, 18 L. J. Q. B. 8. But in *Third British Building Society v. Barrett*, 1849, 14 L. T. 259, Mr. Serjeant Jones, Judge of the Islington County Court, gave possession to the trustees of a building society under the tenancy clause.

“The utmost effect which can be given to the clause is to create a tenancy at will :” BLACKBURN, J., in *Turner v. Barnes*, 1862, 2 Best & Smith 435; *Doe d. Barstow v. Cox*, 1847, 11 Q. B. 122, 17 L. J. Q. B. 8.

An action of debt for use and occupation would lie : *Standen v. Christmas*, 1847, 10 Q. B. 135; *Barnard v. Pilsworth*, 1849, 6 C. B. 698a.

206. *Notice of commencement of tenancy must be given to defaulting mortgagor—Power to distrain.*—By a mortgage deed it was provided that the mortgagor, in the event of his making default in payment of the sums advanced to him, should *immediately* or at any time after such default hold the mortgaged premises as yearly tenant to the mortgagees, the trustees of a building society, from the date of the deed at a specified rent, and that they should have the same remedies for recovering the rent as if the same had been reserved upon a common lease.

The mortgagor having made default, the mortgagees, without having given him any notice of their intention thenceforward to treat him as a tenant, distrained after the lapse of more than a year from default as for a year's rent in arrear.

The Court of Exchequer (KELLY, C. B., MARTIN, CHANNELL, and PIGOTT, BB.) *held*, that, *not having given him notice* of their intention to treat him as a tenant they were not entitled to distrain.

MARTIN, B., in delivering the judgment of the court, said :—  
“The defendants insisted that upon the mortgagor making default in March, 1868, he became their tenant, and that they had, therefore, a right to distrain on the 4th May, 1869, for a year's rent, which had become due according to their contention on the first of May. There was, however, no notice given by the mortgagees to him of any determination on their part to alter the terms on which he held. We think that before such a clause as this can be acted upon, some notice must be given to the mortgagor of the determination of the mortgagees to treat him as a tenant or that some communication on the subject must take place.”

*Clowes v. Hughes*, 1870 ; L. R. 5 Ex. 160 ; 18 W. R. 459, Ex.

207. *Mortgagor occupying premises as tenant to mortgagees, sub-letting to third party—As to right of mortgagees to distrain on goods of third party.*—Defendants, the trustees of a building society, distrained upon certain premises for rent, under a power of



distress contained in a mortgage deed executed between the mortgagor and the defendants, the mortgagees, whereby the said premises were demised to them and it was provided that in case of non-payment of certain monthly instalments, the defendants might distrain for the amount in arrear, as for rent in arrear upon a common demise.

When the mortgage was executed, the mortgagees were in possession of the premises, but shortly afterwards the mortgagor took possession, and subsequently without the consent or knowledge of the mortgagees let the premises to the plaintiff, who had no knowledge of the mortgage. At the time of the distress, one quarter's rent was due from the plaintiff to the mortgagor, while several monthly instalments were due from the mortgagor to the society. In an action of replevin in the county court the judge found for the plaintiff. The defendants appealed.

The Court of Queen's Bench (BLACKBURN, LUSH, and ARCHIBALD, JJ.) held that the mortgage-deed contained a license to seize the mortgagor's goods only, and as there was no agreement for rent to be paid by plaintiff to defendants, the county court judge was quite right: *Gibbs (resp.) v. Cruikshank (app.)*, 1873; 54 L. T. 250.

**TERMINATING SOCIETY** defined. See DEFINITIONS.

„ Mortgage to a. See MORTGAGE.

208. *Terminating societies—Thirteen years' term—Errors—Indefiniteness of a—Borrower's liability terminated if he has redeemed.*—The plaintiffs were the trustees of a Benefit Building Society at Sheffield.

The society was started in 1864 under the following conditions:—

The subscription was to be 10s. per month for each share, and when by this means the sum of 120*l.* had been raised, that sum was borrowed by one of the

members, who thus became an "advanced" member. An "advanced" member's subscription was increased to 1*l.* per month instead of 10*s.*, and he secured this payment by a mortgage.

*The society was to continue in existence till all the members had become advanced and had received their 120*l.*, and then the accounts were to be audited and the affairs of the society concluded. It was calculated that the ends of the society would be accomplished in 13 years, but through unforeseen circumstances the time occupied was 15 years.*

The defendant was the holder of five advanced shares, but in 1872 he had redeemed his mortgage and paid off the amount, which was estimated as due from him. The society brought their action to recover the amount of his contribution of 1*l.* per month for the two years 1878 and 1879, and contended that although he had paid the money he still continued to be a member.

The case came before BAGGALLAY, L. J., at Leeds, and he decided against the defendant.

Against this judgment the defendant appealed and was successful.

*Chatterton v. Corthorne*, June, 1879, Ct. of App. (BRAMWELL, BRETT, and COTTON, L. JJ.) Not reported.

This decision is analogous to the old one of *Priestley v. Hopwood*, 10 L. T. (N. S.) 646.

The different result that attended *Farmer v. Giles*, (30 L. J. Ex. 65; 2 L. T. (N. S.) 387), arose from the different provision (or rather want of guiding provision) in the rules of the society concerned.

In consequence a redeemed member in that case was held liable to continue his payments.

209. *Where the rules lead to that conclusion the liability of a borrower (even if he has not yet received the receipt on his mortgage) may become terminated by the expiration of the term of years originally expected as the duration of the society even if its funds prove insufficient to pay off the non-borrowing members the full amount of their shares.*

The decision was against the trustees of the society, and, on appeal was affirmed (February, 1878), by **BRAMWELL, BRETT, and COTTON, L. JJ.**

*Smith v. Liddleley.* Not reported.

## TRANSFER OF BUSINESS.

210. *A society may transfer its engagements* to any other society, upon terms to be agreed upon by three-fourths of the members (holding not less than two-thirds of the whole number of shares) of each society present at general meetings respectively convened for the purpose. 37 & 38 Vict. c. 42, s. 33.

*Rights of creditors* not to be prejudiced by such transfers. 37 & 38 Vict. c. 42, s. 38. 40 & 41 Vict. c. 63, s. 5.

*Notice of transfer* to be sent to the registrar and registered by him. 37 & 38 Vict. c. 42, s. 33.

Such registration operates as an effectual conveyance, transfer, and assignment, as at its date, of the funds, property, and assets of the society transferring to the transferee society, as set forth in the instrument of transfer, without any conveyance, transfer or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments, the title to which cannot be transferred without admittance. 40 & 41 Vict. c. 63, s. 5.

## TRANSFER OF MORTGAGE.

211. *Action to recover the sum of 98l. 19s. due for arrears.*

A society had, in accordance with a mortgage dated January 9, 1880, and four indentures at subsequent dates, made certain advances to H. amounting to 1,400l. or 1,500l. On January 1, 1881, H. the original mortgagor, transferred his interests in the mortgages to the present defendant, and an Assignment was

executed by which C. covenanted to perform all those things which H. had previously engaged to perform to the society. The rules of the society provided that members might transfer their shares on payment of a transfer fee of 1s. per share, subject to the approval of the board, and that the transferee should "thereupon become a member of the society, and be entitled to all the rights and privileges to which the original holder would have been entitled."

The 86th rule provided for the transfer of mortgage and said, "If any member who shall have obtained an advance shall be desirous of selling the property mortgaged, the purchaser may take the property subject to such mortgage, and thenceforth shall become answerable for the payment of all advance repayments in arrear, all fines then due thereon, as well as for all future advance repayments and fines thereon from time to time falling due," and the member transferring his interest was to be released "from all future responsibilities in respect of such property so transferred."

In pursuance of these rules, notice having been given by H., the board gave their approval, and the transfer form was signed by all parties, and duly entered in the books of the society. Certain instalments were in arrear at the time the transfer was made, and it was for the recovery of those instalments that the present action was brought.

It was submitted that there was no case. The transfer was a promise to H., and not to the society at all. It was a private bargain between H. and C., entered into under circumstances which, if H. was plaintiff, would entitle the defendant to relief against him. The transfer said, "I, H., do hereby assign and transfer all my interest," and so on, and the document signed by C. was this: "I accept the same, and will keep up the repayments, and conform to all the rules

and bye-laws of the society." It was a promise made to H., and there was no promise made to the society.

STEPHEN, J., gave judgment for the plaintiff. Whatever might have been the intention of C. when he took the Assignment, he had, in point of fact, put himself in the position of a shareholder in the society, and subjected himself to the rules.

*Municipal Building Society v. Curtis*, Nov. 1881, Q. B. Div. Not reported.

### TRANSFER OF SHARES.

212. A building society may describe the *form of transfer* in a schedule to its rules. 37 & 38 Vict. c. 42, s. 19.

Transfers are exempt from *stamp duty*. 37 & 38 Vict. c. 42, s. 41.

### TREASURER.

213. *Under the Building Societies Act, 1874.*—The rules must set forth the manner of his appointment, remuneration, and removal, as well as his powers and duties. 37 & 38 Vict. c. 42, s. 16.

214. *He must give security* in manner provided by the Act, being an officer who has the receipt or charge of money belonging to the society, before taking upon himself the execution of his office. 37 & 38 Vict. c. 42, s. 23.

215. *He is liable to account* when the rules appoint, and when called upon by the directors to do so, and to pay over all moneys, and give up all securities and effects, &c., of the society remaining in his hands ; and in default may be proceeded against in manner provided by the Act. 37 & 38 Vict. c. 42, ss. 23, 24.

216. He is not liable in case of *robbery*: *Walker v. British Guarantee Assurance*, 1852, 18 Q. B. 277.

## TRUSTEES.

217. *Under the Building Societies Act, 1874.*—May be appointed by the society, or the directors, for the purpose of investments (of surplus funds) in the public funds, or to be admitted (not more than three) as tenants in respect of copyhold or customary estate. 37 & 38 Vict. c. 42, ss. 25, 28. Nothing, however, vests in them by their mere appointment, as in the case of trustees of a society under the Act of 1836.

218. *When a trustee is absent, or becomes bankrupt, or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or if it be unknown whether he is alive or dead, the registrar, on application and proof satisfactory to him, may direct the transfer of any stock (standing in the name of such person) into the name of any other person or persons as trustee or trustees.* 37 & 38 Vict. c. 42, s. 26.

219. *All property, &c., held in trust for a society, certified under 6 & 7 Will. 4, c. 32, vests in the society on its incorporation, without any conveyance or assignment, except in cases where the title cannot be transferred without admittance.* 37 & 38 Vict. c. 42, s. 27; 40 & 41 Vict. c. 63, s. 3.

UNION OF SOCIETIES. See TRANSFER.

## VOTING FOR COUNTIES.

220. *Mortgagor's right to vote*—8 Hen. 6, c. 7.—The right to vote as a forty shilling freeholder is not conferred upon a borrower from a building society, unless the annual value of the land mortgaged exceeds the annual payments to the society (for interest) by forty shillings: *Copland, app. v. Bartlett, resp.*, 1848, 6 C. B. 18; 13 Jur. 127; 2 Lutw. Reg. Ca. 183;

*Beamish*, app. v. *Stoke*, resp., 1851; 11 C. B. 29; 21 L. J. 9 C. P.; explained by *Rolleston v. Cope*, (*infra*) 222.

221. *Value of mortgagor's interest should be ascertained.*—A member of a building society received an advance of seventy-three pounds to purchase a piece of land, of which the annual value was three pounds, and mortgaged it to the society to secure the monthly payments, amounting annually to four pounds. Before the 31st January he had paid instalments to the amount of seventy-one pounds. The revising barrister found that the mortgagor had, prior to the 31st January, a freehold estate of the value of forty shillings *per annum* (above all charges), and retained his name on the list of voters:

*Held* (by ERLE, C. J., WILLIAMS, BYLES, and KEATING, JJ.) that his decision was right.

BYLES, J., distinguished between *Copland v. Bartlett* (*supra*), and the present case, that the barrister there did not find what the value of the voter's interest was; but here the value, before the last payment was made, was found to be seventy-one pounds. He also said that he thought the principle wrong which would reduce the value of the beneficial interest by the periodical payments made in diminution of the *principal*.

*Robinson v. Dunkley*, 1863; 15 C. B. (N. S.) 478; 33 L. J. 57 C. P.

222. *In ascertaining annual value to mortgagor interest only to be deducted.*—A member of a building society mortgaged a freehold to the society as security for an advance of three hundred pounds. By the terms of the deed and the rules of the society, he was bound, in order to redeem the property, to pay to the society, during a period of ten years from 1863, monthly instalments, for principal, interest, and expenses, which amounted in the whole to forty-one pounds eight shillings each year, two-thirds of which were in discharge of principal, and one-third in payment of interest; and in case of certain defaults, a power of entry was reserved to the society. The interest, which was not

more than seven per cent. for the term, was capitalized, and added to the sum borrowed. The mortgagor had paid three hundred and fifty pounds, and two years remained during which he had still to pay the monthly instalments; but he was entitled to redeem the property by a present payment of seventy-three pounds one shilling. The annual value of the houses was thirty-one pounds four shillings.

The Court of Common Pleas (BOVILL, C. J., WILLES, MONTAGUE SMITH, and BRETT, JJ.), held that, in ascertaining the yearly value of the estate to the mortgagor, the interest only was to be deducted, and not the payments made in reduction of the principal mortgage debt, and consequently that the mortgagor had an estate of more than the yearly value of forty shillings, above all charges, in respect of which he was entitled to a vote for the county. *Copland v. Bartlett and Beamish v. Stoke (supra)*, considered; *Robinson v. Dunkley (supra)*, followed: *Rolleston v. Cope*, 1871; L. R. 6 C. P. 292.

### WILL.

223. *What is included in word "Moneys."*—A testator bequeathed by his will "all the moneys both in the house and out of it." He was possessed of a sum of Consols and some shares in a building society.

BACON, V. C., held, that neither passed by the bequest: *Collins v. Collins*, 1871; 24 L. T. Rep. (N. S.), 780.

*Member dying without will.* See DEATH.

### WINDING-UP.

224. *An Incorporated building society may be wound up* either voluntarily under the supervision of the court, or by the court, if the court shall so order, on the petition of—

- (a.) Any member authorized by three-fourths of the members present at a general meeting specially called for the purpose, to present the same on behalf of the society;



- (b.) Any judgment-creditor for not less than fifty pounds. 37 & 38 Vict. c. 42, s. 32.

See also DISSOLUTION.

225. *General orders* for regulating the proceedings of the court may be made by the proper authority, and notice of the commencement and termination of every winding-up is to be sent to the registrar, and registered by him. 37 & 38 Vict. c. 42, s. 32. See Order XXXIX., of the Consolidated County Court Orders and Rules, 1875, and see Order of Sederunt for Scotland, in Appendix.

*By County Court.*

226. In case of winding-up by a county court of an Incorporated building society, there arises application of the Companies Acts, 1862 and 1867, to the Building Societies Act, 1874.

*Andrew v. Swansea Cambrian Building Society*, 1880, (DENMAN and LINDLEY, JJ.), 30 L. J. 428, C. P.; 44 L. T. (N. S.) 106.

*Unincorporated societies.*

With regard to Building Societies that remain Unincorporated and under the old Statutes, they are treated, for the purposes of Winding-up, as Unregistered Companies and as subject to the provisions of section 199 of the Companies Act, 1862, with unlimited liability.

In consequence, it has been *Held* that the Winding-up of Building Societies, having a legal existence only by the statute of 1836, must be carried out compulsorily under and according to the Companies Acts.

*Re Midland Counties B. S.*, 4 D. J. & Sm. 468; 12 W. R. 661; 13 W. R. 399; 33 L. J. (Ch.) 520, 739.

*Re St. George B. S.*, 4 Drew. 154.

*Re Doncaster B. S.*, L. R. 3 Eq. 158; *Re Queen's B. S.*, L. R. 6 Ch. 815; *Re Professional, &c. B. S.*, L. R. 6 Ch. 856.

227. *Appointment of provisional liquidator.*—A provisional liquidator will not, in general, be appointed before the hearing of a winding-up petition, not pre-

sented by the society, unless the court is satisfied that the petition is unopposed. Decision of ROMILLY, M. R., affirmed: *Re Cilfoden Building Society (a)*, 1868; L. R. 3 Ch. Ap. 462.

228. *When winding-up petition barred.*—A petition to wind up a building society by a member, who had given notice of withdrawal but had not been paid, was dismissed on the grounds that he had no such substantial interest in the society's assets as would entitle him to support the petition, and had acquiesced in a resolution, by which the losses were to be *exclusively borne* by those persons who were members *antecedently* to the resolution; although it was passed after he gave the notice, and although it was admitted from the circumstances to be bad, as being *ultra vires* of the society. Money however had been borrowed on the faith of the resolution, and the claims of the lenders, which were shown to exceed the value of the society's assets, obtained a priority against the members. Decision of MALINS, V. C., affirmed by SELWYN and GIFFARD, L. JJ.: *Re London Building Society*, 1869; 21 L. T. Rep. (N. S.) 8 Ch.

229. Though a *creditor* is entitled to a winding-up order against an insolvent company *ex debito justitiæ*, this is not so as to a contributory: *Re Professional, &c, Building Society*, 1871; L. R. 6 Ch. Ap. 856.

230. *Petition by withdrawing member.*—E., a member of a benefit building society, who had given notice of withdrawal, entitling her to be paid in rotation, and who had not been paid, was *held* by Lord ROMILLY, M. R., not entitled *ex debito justitiæ* to an order for winding-up the society, and, under the circumstances, an order was refused: *Re Planet Building Society*, 1872; L. R. 14 Eq. 441.

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(a) This decision, and those which follow, although relating to winding up proceedings under the Companies Acts in the Court of Chancery, are inserted here as they would probably be followed in proceedings under the winding-up clause of the Building Societies Act, 1874.

231. *Notice of withdrawal prior to winding-up order.*—Where a building society was being wound up, and certain unadvanced shareholders had been removed from the list of contributories on the ground that they had, more than one month prior to the petition for winding-up, given notice of their intention to withdraw, in accordance with the rules of the society, Wood, V. C., *held*, that a claim for interest under the rules should be allowed at five per cent., with annual rests, and that the claimant was at liberty to add the amount of his costs to the debt: *Re Doncaster Building Society, Ex parte Clark*, 1866; 14 L. T. Rep. (N. S.) 18.

### WITHDRAWAL.

232. *The terms upon which shares may be withdrawn* must be set forth in the rules. 37 & 38 Vict. c. 42, s. 16.

233. *Amount withdrawable, how to be ascertained.*—Previous to the passing of the Building Societies Act, 1874, it had been held that a member, who had given notice to withdraw, might file a bill in Chancery to ascertain and recover the amount due to him (*Smith v. Lloyd*, 1859; 26 Beav. 507), but that statute makes provision for the determination of all disputes between the society and any of its members. See DISPUTES.

234. *Where the amount due* had been settled by arbitration, the Court declined to inquire whether the amount awarded was correct according to the rules: *Armitage v. Walker*, 1855, 2 Kay & J. 224; 2 Jur. (N. S.) 13; 20 J. P. 53; 26 L. T. Rep. 182.

235. Even before the statute, 37 & 38 Vict. c. 42, it had been decided that *questions as to priority of payment* among the members withdrawing, should be determined by arbitration: *Wright v. Deeley*, 1866, 4 H. & C. 209. See the case of *Griffith v. Planet Building Society*, determined by the registrar, ACQUIESCENCE, *ante*.

See also WINDING-UP.

# APPENDIX I.

## ABSTRACT OF RULES

FOR A

## PERMANENT BUILDING SOCIETY.

### CONSTITUTION OF THE SOCIETY.

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# RULES

FOR A

## PERMANENT BUILDING SOCIETY.

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### CONSTITUTION OF THE SOCIETY.

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#### I.—NAME AND PLACE OF BUSINESS.

THIS society shall be called the “Permanent Building Society,” and is established in conformity with the provisions, and under the authority and sanction, of “The Building Societies Acts.” The chief office or place of meeting for the business thereof shall be in the county of , or such other place as the directors from time to time appoint.

#### II.—OBJECTS.

This society is established for the purpose of raising by the subscriptions of the members a stock or fund for making advances to them out of the funds of the society upon security of freehold, copyhold, or leasehold estate, by way of mortgage, and generally for the purposes allowed by “The Building Societies Acts.”

#### III.—SUBSCRIPTION MEETINGS.

1. The first subscription meeting of this society shall be held at its office on the second ] day after the

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incorporation of the society, and a subscription meeting of the society shall be held on the \_\_\_\_\_ in every month.

2. Such subscription meetings shall commence at \_\_\_\_\_ o'clock precisely in the evening, and shall terminate at \_\_\_\_\_, unless any special matter shall arise, in which case the chairman may extend the time.

#### IV.—ANNUAL MEETINGS.

1. The annual meeting of the society shall be held in the month of \_\_\_\_\_ in every year, at such time and place as the board of directors appoint. One week's notice by circular, signed by the secretary, shall be given to each member previous to the meeting.

2. At every annual meeting of the society a general report, signed by three directors and the secretary, showing the transactions of the society during the past year, its present condition and the state of its affairs generally, and the auditors' report and balance-sheet, shall be read to the society, and the books and accounts, and the statement of accounts, prepared pursuant to 37 & 38 Vict. c. 42, s. 40, audited and approved by the auditors, shall be produced for the inspection of the members. A copy of such statement shall be supplied to every member, depositor, or creditor for loans, on demand. At the annual meetings, also, new directors and auditors shall be elected by ballot in the place of those who retire from office, and other vacant offices (if any) be filled up; and the present state and future prospects of the society may be discussed, and such other business transacted as may be deemed proper and expedient (a).

#### V.—DIRECTORS' MEETINGS.

1. The directors shall meet as often as necessary, at such place and time as they determine upon, for the purpose of conducting the business of the society.

2. Three elected directors shall constitute a quorum,

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(a) The annual meeting should be fixed at such time as would allow two or three months for the preparation and auditing of the year's accounts

except when the funds of the society are advanced to members, when a quorum of five must be present.

3. The chairman, or deputy chairman, or two of the directors, or the secretary, may call a meeting of the directors at any time upon giving two clear days' notice in writing. In case the requisite number of directors do not attend, the secretary may adjourn the meeting to some other time.

## VI.—SPECIAL GENERAL MEETINGS.

1. A special general meeting of the members shall be summoned by the secretary whenever the directors require him so to do, or upon his receiving a requisition in writing, signed by not less than seven members of the society, stating the objects for which such meeting is required.

2. The members subscribing such requisition shall deposit with the secretary such a sum as shall be deemed sufficient to pay the expenses of the meeting; and the members present at such meeting shall decide whether the said expenses shall be paid out of the funds of the society, or out of the sum so deposited as aforesaid.

3. Every special general meeting shall be summoned by circular, posted to the registered address of every member, seven clear days prior to the day appointed for the meeting, and such circular shall state the objects for which the meeting is to be held (b).

4. In the event of the secretary neglecting to summon a special general meeting in manner aforesaid, he shall be fined 1*l.*; and in case of such neglect, the chairman, deputy chairman, or any two directors, or the members signing the requisition, may summon such special general meeting by circular in manner aforesaid.

5. No business shall be transacted at any special general meeting other than that stated in the circular by which such meeting is summoned.

## VII.—ADJOURNMENT OF MEETINGS.

Any meeting of the members or of the directors may, by a resolution duly carried, be adjourned or removed from one time or place to another, or any number of other times

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(b) Any other method of summoning a special general meeting may be provided by the rules.

or places ; and every meeting by adjournment or removal, shall be deemed a continuation of the original meeting.

### VIII.—NOTICES.

1. All general notices to members (except where otherwise directed by these rules) shall from time to time be affixed on some conspicuous place in the subscription room for the time being ; and, unless when the directors think it necessary, or these rules require, that circulars should be sent to each member of the society, all notices so affixed shall be considered sufficient and duly served.

2. In no case shall the proceedings of any meeting, whether of the directors or members, be void or voidable merely on account of the omission to give, or of any defect in, the notice required by these rules, unless an objection on such ground be taken previously to entering on the business of the meeting.

### IX.—VOTING.

Every question submitted to any meeting of the directors or members, shall be decided by the votes of the majority of those present entitled to vote. Such votes shall be first taken by show of hands, upon which the decision of the chairman of such meeting shall be final, unless a scrutiny be demanded, in which case it shall be forthwith taken by ballot ; and then every member qualified to vote, whose subscriptions are not in arrear, shall have one vote [or, one vote for every shares held by him, provided that no member shall have more than                    votes in the whole], and in either case if there be an equality of votes, the chairman shall give the casting vote in addition to his vote as a member. No member shall be entitled to attend any meeting of the society, or to vote on any question, without producing his certificate of shares if required so to do by any of the directors, nor until he has been three months a member of the society, and has duly paid his subscriptions for that period. No member or officer of this society shall be allowed to attend during the discussion of, or to vote on, any question affecting his individual interest or conduct.

## X.—ARBITRATION.

1. All disputes between the society and any of its members, or any person claiming by or through any member, or under these rules, shall be settled by reference to arbitration (a).

2. At the first general meeting of the society, after its incorporation, five arbitrators shall be appointed, none of them being beneficially interested, directly or indirectly, in the funds of the society. In case of dispute, the names of the arbitrators shall be written on pieces of paper, and placed out of view in a box; and the three whose names are first drawn out by the complaining party, or by some one appointed by him, shall be the arbitrators to decide the matter in difference, and their decision shall be final.

3. If any arbitrator die, resign the office, or refuse or become incapable to act, the society at its next general meeting shall appoint another in his place.

## XI.—ALTERATION, ADDITION, AND CONSTRUCTION OF RULES.

1. Any of the rules of the society may be rescinded or altered, or a new rule made, at a special general meeting of the members convened for the purpose, pursuant to Rule VI. The circular convening the meeting shall specify the rescissions, alterations, and additions proposed, and no rescission, alteration, or new rule shall be made without the concurrence of three-fourths of the members present at such meeting. Any amendments relating to the particular rule to be altered or added to may be proposed; but no rule not mentioned in such circular shall be in any respect altered or rescinded, except so far as the same may relate to the subject matter of any rule so mentioned in the circular. All alterations in, or additions to these rules, shall be duly registered, pursuant to 37 & 38 Vict. c. 42, s. 18.

2. In the construction of these rules, the word "share" shall apply as well to a fraction of a share as to a whole share; the word "month" shall be held to be a calendar

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(a) The rules may, if desired, direct that disputes shall be referred to the registrar, or to the court, under 37 & 38 Vict. c. 42 (ss. 16, 34—36).

month ; the word "year" shall mean the society's year, and every such year shall be taken to expire with the day of ; the word "board," or "directors," shall mean the board of directors for the time being. The term "re-payment" or "re-payment subscription" shall be held to mean the sums or subscriptions periodically paid by members in discharge of their advanced shares ; and whenever any word importing the singular number or the masculine gender only is used, it shall be held to include and apply to the plural number or feminine gender, as the case may be, and *vice versa*, unless there be something in the subject or context repugnant to such construction.

3. If any question arise on the construction or meaning of any of the rules of the society, such question shall be referred to the solicitors of the society, whose opinion shall be put into writing, and deposited with the secretary, if required by the directors.

## XII.—EXPENSES AND CONTINGENCIES.

1. Every member shall pay quarterly, in addition to his subscription on unadvanced or advanced shares respectively, the sum of per share (excepting on such unadvanced shares as are fully realized) as a contribution towards expenses and contingencies. In case of non-payment, the same may be charged upon the first subsequent payments of the member becoming due for his subscriptions on his shares, and deducted from the same, or treated if not paid as subscriptions in arrear. Where a member pays up the whole, or any portion of his shares in advance, and receives discount thereon, the expense of quarterage for the whole of the time which it would ordinarily take to pay up his share in full, shall still be payable, and if not paid treated as subscriptions in arrear, and as such be liable to *pro rata* fines.

2. All fines, contributions, and fees whatsoever mentioned in these rules, except remuneration fees payable to the officers, shall be applicable to pay expenses and contingencies ; and so also (if the directors deem it expedient) shall a deduction (a) at £ per cent. per annum, from the

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(a) As to the principle upon which this and similar deductions should be regulated, see "Scratchley's Practical Treatise on Building Societies."

amount of income derived from the repayment subscriptions of advanced shares.

3. If the expenses or losses be greater than the amount of the society's funds available for the same, the excess shall be borne rateably per cent. by the holders of unadvanced shares not realized, in proportion to the number of years the same shall have been in force; but not by those who leave their realized shares as a deposit in the society's hands, and receive interest for the use thereof, pursuant to Rule XXIX. The rate of contribution per share shall be settled by the consulting actuary, so that each share may be debited with the same rate, but the payment thereof may be deferred until the withdrawal or realization of the share (b).

4. At the end of the first three years, and every subsequent three years, a valuation of the liabilities and assets of the society shall be made by the consulting actuary; and if, after all losses and expenses shall have been satisfied, and bonus under Rule XXXIII set aside for the advanced shares, any surplus profit remain, arising from excess of assets over liabilities, the same shall be appropriated thus:—

to a permanent guarantee fund, to meet future contingencies: and the remaining among the holders of all unadvanced shares which are not yet realized nor in arrear for subscriptions and fines, in proportion to the number

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(b) The advisability of including the Borrowers as liable to contribute to Losses (a point which was unimportant in old-fashioned societies) has, of late, become deserving of serious consideration, in consequence of the prevalence of the custom of receiving Loans or Deposits from non-members. Societies, which derive their funds largely from this source, will find it more than ever prudent in their rules to impose upon the Advanced shareholders the liability of contributing to any losses that may be incurred, rateably with the Unadvanced shareholders. The absence of some such provision may cause the losses to press very heavily on the subscriptions of the Investing members, where the Deposits greatly outweigh the unadvanced shares. Its propriety has been anticipated by the 14th sect. of 37 & 38 Vict. c. 42, which provides that the liability of Advanced shareholders is to be limited to the amount payable under any mortgage or other security or *under the rules* of the society. It will be reasonable, in return, to allow the Borrowers to participate in the profits, and, in such case, a slight variation throughout the above rules will be required.

and amount of the shares they hold, and to the number of years such shares respectively have been in force: such bonus shall be paid when the shares are fully realized. No portion of the bonus shall be paid to unadvanced shareholders withdrawing previously to the realization of their shares, unless the withdrawal be compulsory, pursuant to Rule XXX (a).

5. After the society has been nine years in existence, the members at a special general meeting summoned for the purpose, with the advice of the consulting actuary, may alter the above proportion in the division of surplus profits; and increase or diminish the amount of the permanent guarantee fund.

### XIII.—DISSOLUTION.

The society may be dissolved, with the consent of three-fourths of the members, holding not less than two-thirds of the total number of shares, in the manner provided by 37 & 38 Vict. c. 42, s. 32 (b), and by the Secretary of State's Regulations.

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## MEMBERS.

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### XIV.—ADMISSION OF MEMBERS.

1. Members may be admitted into the society at any time, on making application to the directors in the form (A) annexed to these rules.

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(a) As to mutuality, and as to periods of valuation, see "Scratchley's Practical Treatise," p. 37. See also Rule XXXIII.

In making a Valuation, care should be taken not to use a *withdrawal* table to measure the liability on unadvanced shares, nor a *redemption* table to value the mortgages, as the result would be doubly erroneous: the liabilities would be under estimated, and the assets would be over valued.

The provision for deferring payment of bonus until realization is not required by the Act of 1874, and other provisions may be made, if desired.

(b) Any other manner of Dissolution may be prescribed.



2. Every member, at the time of entering the society, shall be furnished with a pass-book, containing a copy of these rules (for which he shall pay           ), in which book his account with the society shall, at the termination of every year, be made up by the secretary.

#### XV.—LOST PASS BOOK.

1. Any member losing his pass book will be supplied with another containing a copy of his account, on payment of a fine of            over and above the cost of the book.

2. If any person, other than the member to whom it belongs, shall produce any pass book and represent himself to be the member therein named, and shall thereupon withdraw or receive any money in respect of the account contained in the pass book, neither the society nor any of its officers shall be held responsible for the same, unless notice in writing of the loss of the pass book shall have previously been given to the secretary.

#### XVI.—PASS BOOKS TO BE LEFT FOR AUDIT.

Each member shall leave his pass book at the chief office of the society [or with one of its agents] on or before the day of            in each year, for the purpose of examination by the auditors, or in default thereof shall be fined           . There shall be delivered to him a receipt for his book, which he shall return on applying for the same at the annual meeting.

#### XVII.—QUALIFICATIONS OF MEMBERS.

1. The holder of a share or part of a share of any denomination, shall be deemed a member of the society.

2. At any time within            after the payment of the entrance fee by any person, the directors may decline admitting or continuing such person as a member; and notice thereof shall be given in writing to such person, and the entrance fee, and any other payment made to the society by him, shall be returned or tendered to him by the secretary. Upon such notice being given, and payment or tender made to such person, he shall cease to be a member of the society, and the secretary shall strike out his name from the register book of members.

3. All shares on which the entrance fee only shall have

been paid, shall be forfeited on the            monthly subscription meeting next after such shares shall have been taken.

### XVIII.—REGISTERS OF MEMBERS, SHARES, &c.

1. A register shall be kept, in which shall be entered the christian and surname, occupation and place of abode, of every member of the society ; and as often as any member shall change his place of abode, he shall within            give notice thereof to the secretary, or forfeit            for neglect. On such notice being given, the alteration shall be entered in the register by the secretary ; and all notices by circular shall be deemed duly given by the secretary by putting the same in the post office, at            , addressed to the member according to the last entry on the register.

2. A register of every member of the society shall be also kept, in which shall be entered the number and numerical order of the shares held by him, the date of entry, transfer, or cancelling of the same, and any other details deemed necessary.

### XIX.—MEMBERS MAY INSPECT BOOKS.

Any member may inspect the society's books at all reasonable times, and any member may have a copy of his account on applying to the secretary, after            days' previous notice in writing for that purpose, and the payment of            . Provided that no member shall have the right to inspect the loan account of any other member.

### XX.—MARRIAGE OF FEMALE MEMBERS.

Any female member who may marry, shall give notice in writing thereof to the secretary, and of the christian and surname, place of abode, and profession or business of her husband, or shall pay a fine of            per share for every month which shall elapse before the notice is given.

### XXI.—BANKRUPTCY OF A MEMBER.

On any member becoming bankrupt, or making an assignment for the benefit of, or any arrangement or composition with, his creditors, or having any judgment or execution against his estate and effects, or if his shares,

or any of them, shall be charged in favour of any person, by or through a judge's order, or otherwise, the assignee, execution creditor, or person obtaining such charge, shall not by reason thereof become a member of the society, but shall be at liberty to sell or transfer the share or shares, or interest of such member to any other person duly admitted a member of the society. Such shares shall, nevertheless, be subject to all the rules of the society, to which they would have been liable in the hands of the member holding the same.

## XXII.—LUNACY OF A MEMBER.

1. In the event of any member becoming lunatic or of unsound mind no fines shall during such lunacy or unsoundness of mind, be payable for arrears of subscription, or otherwise, on any share or shares he may hold, but the committee or guardian of such afflicted member, legally appointed, shall be entitled to withdraw the amount payable to such member in the manner prescribed in the rule for withdrawals.

2. In case no guardian or committee be legally appointed, the board may direct payment of the amount to which such member would have been entitled on withdrawal from the society, to the person having the care of such member, at the expiration of three months after a request in writing, signed by such person, has been left with the secretary, upon evidence satisfactory to the directors of the lunacy or unsoundness of mind of the member and that the withdrawal is necessary for his maintenance being given, and upon such person giving such indemnity against all claims in respect of such shares, as the directors think fit to require for the security of the society.

3. In case the afflicted member has received an advance of shares, the committee or guardian having the care of such member, may dispose of the mortgaged property, or redeem the mortgage, and exercise any other privileges pertaining to the shares; and in such case the transfer or redemption fee chargeable by the society under these rules shall be reduced one-half; provided nevertheless that, on application being made by the secretary in writing to the committee or guardian, if any, or if none, to some relative or interested friend of the afflicted member to see to the due payment of his subscriptions and other payments, the full amount of all fees and fines that may thereafter become due

according to these rules may be enforced, and the directors may then take the ordinary steps for the recovery of all arrear payments whatsoever, which may be then due in respect of the shares or mortgaged property of the afflicted member, and if requisite may proceed to a sale of such mortgaged property.

### XXIII.—DEATH OF A MEMBER.

1. Upon the death of any member of the society holding shares, upon which no advance shall have been made, his legal personal representative, or other person entitled shall, within one month afterwards, give notice thereof in writing to the secretary, stating the christian and surname, place of abode, and profession and business of such personal representative, or other person entitled to the shares of such deceased member, or in default thereof, shall pay a fine of

2. If any member die intestate, the directors may pay any sum of money in the funds of the society belonging to such member to the person who shall appear to them to be entitled under the Statute of Distributions to receive the same, without taking out letters of administration, provided the amount do not exceed 50*l.*, upon satisfactory evidence of death and a statutory declaration of the facts.

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## SHARES AND SUBSCRIPTIONS.

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### XXIV.—UNADVANCED SHARES.

The stock or fund of the society shall be raised in shares of the following denominations :—

- (a.) Paid up shares of £            each, upon which interest shall be receivable by the member half-yearly, and the amount of which shall be repayable at months notice either from the member or the society.
- (b.) Subscription shares, with accumulative interest, of £            each, realizable by [monthly] subscriptions of            in a period of            years, or by such

other subscription, and in such other period as the directors from time to time appoint for shares subscribed for after such appointment.

- (c.) Deposit shares of £        each, without accumulative interest, upon which payment may be made at the discretion of the member, the amount to the credit of the share being withdrawable at notice.
- (d.) Preferential shares of £        each, the total amount of which shall not at any time exceed [one-half] of the amount to the credit of subscription shareholders.

Each member shall pay such entrance fee as the directors appoint with respect to the class of shares taken by him.

## XXV.—RECEIPT OF SUBSCRIPTIONS.

All subscriptions for shares, repayment subscriptions, fines, and other moneys whatsoever becoming due and payable to the society, shall be received only at the usual subscription meetings. All moneys so received at such subscription meetings shall be paid to the bankers of the society for the time being; and a book containing the bankers' entries of money so paid, or the banker's receipt in lieu thereof, shall be produced at the next meeting of the directors, to be initialled by the chairman as duly examined.

## XXVI.—CERTIFICATE OF SHARES.

Each member upon subscribing for a share or shares, shall be entitled to a certificate of such shares, specifying the number, denomination, and amount thereof respectively, signed by [three] directors, and countersigned by the secretary, which certificate shall be evidence of his title thereto.

## XXVII.—PAYMENTS IN ADVANCE.

The directors may allow interest by way of discount, on subscriptions paid in advance on subscription shares at such rate (not exceeding        per cent.) as they deem fit (a).

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(a) As to this rule, see "Scratchley's Practical Treatise," Art. 93, p. 54.

**XXVIII.—TRANSFER OF UNADVANCED SHARES.**

Any member may transfer his unadvanced shares to any person approved by the board, or to any existing member of the society, on payment to the society of all arrears, fines, and other payments then due, and of        per share as a transfer fee. No transfer shall be valid unless made in the form (B) annexed to these rules, and a proper record of all transfers shall be made in a book to be kept for that purpose by the secretary.

**XXIX.—WITHDRAWAL OF UNADVANCED SHARES.**

1. Any member may withdraw his unadvanced subscription shares on giving one month's notice, in writing, of his intention so to do to the secretary at any subscription meeting of the society, and leaving his pass-book at the society's chief office.

2. The board shall have full power, from time to time, to limit the number of shares that may be advanced in one month ; but all prior applications for an advance shall have priority over notices of withdrawal.

3. In case any share is withdrawn on which the member has been allowed interest for payments in advance, the directors shall deduct a proportionate part of such interest for the time not already expired (if any) in respect of which interest was allowed.

4. Part of a share may be withdrawn, and the remainder continue in force, entitled to the same privileges, and subject to the same conditions as the original share ; in which case a new certificate for the reduced amount (bearing profits from the original date of the whole share) shall be issued. In like manner a part of a share may be transferred, and the remainder be retained by the original member. Such withdrawal or transfer shall be subject, however, to the consent of the board, and to any regulations they may make from time to time in respect thereto.

5. The following fees shall be paid upon the withdrawal of unadvanced subscription shares, viz :        in the pound if the share be withdrawn during the first year after it shall have been issued, and        in the pound if withdrawn during any subsequent year (a).

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(a) The amount of the withdrawal fee (if any) should be determined by the special circumstances of the locality.

6. Shares to be withdrawn (not wholly subscribed for) shall be paid out in rotation according to the order of the applicants on a list kept by the secretary for that purpose; or if the directors should, from the number of applications for withdrawal, think it desirable, then in such manner, that each member may receive an equal proportion of his subscriptions paid in, so that all such members may be simultaneously accommodated with a portion of their shares. In case the expenses of the society, or any losses sustained by it, exceed the amount of the society's funds available for the same, all shares under notice of withdrawal shall be chargeable with a due proportion (measured by number and amount) of such excess, according to the number of years such shares shall have been in force; and this rule shall equally apply to members cancelling their unadvanced shares previously to their taking a loan from the society.

7. In case of the death or insanity of a member, and upon application of the widow, or representatives of such member, she or they shall be entitled to a preference before ordinary members.

8. Next after payment out of withdrawn shares of deceased and lunatic members, the persons holding unadvanced shares realized by subscription for the term selected, shall have the preference, and shall, unless the directors decide otherwise, be paid out in rotation, according to the times at which the shares become realized, subject, however, to the aforesaid deduction for excess of expenses or losses (if any); and from the date of the realization, until such payment, interest payable annually at a rate not exceeding five per cent. per annum shall be allowed to such members, on the amounts respectively due to them.

9. Subject to the provisions aforesaid, the sums payable on withdrawn shares, upon which all subscriptions and fines shall have been duly paid, shall be according to the following tables: and where a member voluntarily withdraws his shares in the course of a year, the sum set down in the tables at the close of the year previous shall be payable, with interest thereon, and also any monthly subscriptions subsequently paid; and so in proportion for a fractional part of a share.

*(Here insert Withdrawal Tables.)*

The amount to be payable on the withdrawal of shares, realizable in other periods of years (if any), shall be determined from time to time by the consulting actuary (a).

10. In every case of a member withdrawing from the society, all fees and fines due by him shall be deducted from the amount which he would otherwise be entitled to receive.

11. Shares in course of withdrawal shall be subject to such other conditions, payments, deductions, and regulations as the directors determine, having reference to the capital, means, liabilities, and general state of the affairs and funds of the society, and the directors may reduce or absolutely waive the payment of the withdrawal fees provided for by clause 5 of this rule, or may suspend the requiring payment of such withdrawal fees for any period they think expedient.

### XXX.—SURPLUS FUNDS.

1. The directors may, from time to time, invest, any portions of the funds of the society, not immediately required for its purposes upon any security authorized by 37 & 38 Vict. c. 42, s. 25. In case a larger amount of money shall be at any time unappropriated, and not applied for to meet advances or other claims, than the board consider advisable so to invest, the directors, after giving notice of at least fourteen days prior to a monthly meeting, may cause the same to be taken by the members (not under notice of withdrawal, nor having received an advance), and the same shall be at once wholly withdrawn, or be taken by such members upon the security of mortgages in the usual way.

2. In case any member shall not attend to receive the same, and to give such acknowledgment of his share being paid off as the board may require, no further interest shall be allowed on the amount standing to his credit in the books of the society.

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(a) A very good principle to adopt in the construction of withdrawal tables is that of an increasing rate of compound interest, so that members may have an inducement to abstain from withdrawing in the prospect of an increasing advantage by remaining members.



3. In balloting for compulsory withdrawals each share shall be drawn separately, and no member holding more than one share shall be liable to compulsory withdrawal of more than one, till every other member has withdrawn one, and in like manner if further compulsory withdrawals be necessary.

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## ADVANCED SHARES.

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### XXXI.—ADVANCES OF MONEY.

1. Whenever the funds of the society are, in the opinion of the directors, sufficient for the purpose, they shall be employed in making advances to members upon security of freehold, copyhold, or leasehold estate, by way of mortgage, and the order in which members become entitled to advances, shall from time to time be determined by the directors, who shall have full power to decide whether such advances shall be made by sale, rotation, or ballot, and whether with or without premium or commission.

2. The payment of the premium or premiums (if any) which a purchaser shall give for his advance, may be made in any number of equal monthly instalments not exceeding to commence from the date of the purchase, and the purchaser shall be liable to the same fines and forfeitures for non-payment of such instalments as are provided by Rule XLIV., in case of the non-payment of monthly repayment subscriptions.

3. The advances shall be for terms from            to years, repayable by monthly or quarterly contributions, covering principal and interest, at the rates hereafter specified, or for such other terms and at such other rates as the board, acting under the advice of the consulting actuary, from time to time direct.

*(Here insert the Repayment Table.)*

4. Every application for an advance must be made in writing to the secretary in the form (C) appended to these rules, stating the amount desired.

5. A member receiving an advance shall pay such entrance fee as the directors may appoint.

6. Every member entitled to an advance shall pay to the secretary a sufficient deposit to cover the solicitor's and surveyor's fees, in the event of the title or value of the property proving insufficient or inadequate as a security ; or of his otherwise failing to complete the same.

7. Every member entitled to an advance shall, within one month from the date of notice forwarded to him through the post-office, find a good and sufficient security by way of mortgage for the same, and in case of failure he shall be allowed a further period of one month to complete the same, provided he pay interest on the advance, at the rate of        per cent. per annum, to commence with the second month so allowed him, at the end of which time his right to such advance shall be forfeited to the next member then on the list, unless he consent to make his repayments in respect of his awarded advance from that date.

8. Every member entitled to an advance shall furnish duplicate particulars of the property proposed as security, on a form to be given him by the secretary ; and the security being accepted by the directors, who shall have been previously satisfied by the surveyor and solicitor of the sufficiency of the security offered, and all other preliminaries being arranged, the money agreed to be advanced shall be paid over to the member. In case the money is applied to the purchase of land, and afterwards to erect buildings thereon, the advance shall be made in such instalments as the surveyor shall advise the board of directors.

9. No money shall be advanced by way of a second mortgage unless the prior mortgage be to the society.

10. If any member be desirous of ascertaining the amount which the directors would be willing to advance on any proposed security, in the event of his entitling himself to receive such advance, he shall give written notice to the secretary, and deposit with him the surveyor's fee, and the surveyor shall thereupon make his report to the directors, if required by them, and the directors shall announce to the member the amount they consider proper to be advanced on the property proposed as security.

11. When an advance is required for twelve years, not more than three-fourths of the value of the mortgaged property shall be advanced thereon, nor more than two-

thirds of its value, when the advance is taken for any longer period (a).

12. Any member obtaining an advance from the society may continue to hold his unadvanced shares or cancel the same, in which latter case the amount due to him under the rule for withdrawals shall be returned to him in cash.

### XXXII.—EXPENSES OF SURVEY, MORTGAGES, &c.

The expenses of every survey, valuation, and supervision by the surveyor of the society, of any buildings erected upon property mortgaged to the society, and of inquiry into title and all other expenses connected with the security, shall be borne by the member applying for or receiving the advance. The expenses of the mortgage (excepting the cost of stamps, registration, and other moneys paid out of pocket at the time by the solicitor or surveyor) may be repaid by an additional and proportional monthly subscription, extending over a period not exceeding calendar months. In case of default the amount due from time to time shall be chargeable on the mortgaged property, and be treated as repayment subscriptions in arrear.

### XXXIII.—COMMISSION (b).

1. A commission after the following scale shall be deducted from all advances made to members and be appropriated to meet expenses and contingencies. In consideration of the aforesaid commission, a member shall not be called upon to contribute, after the date of the advance in respect of the shares advanced, any other sums towards expenses or contingencies, excepting the quarterage, fines, transfer, and other fees and payments mentioned in these rules (c).

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(a) For shorter periods it will be for the directors, on the advice of the surveyor and solicitor, to decide what proportion of the value of the property shall be lent. They should bear in mind that the risk of subsequent deterioration in the value of a security increases with the length of the period of the mortgage.

(b) These clauses would have to be modified where the bidding system is adopted, or where no commission is proposed to be charged.

(c) The rate of commission that should be charged is a matter for practical consideration, and varies with the circumstances of

*(Here insert Scale of Commission.)*

2. Should the directors consider it expedient, at their own discretion in each particular case, the commission to be deducted as aforesaid may be allowed to stand over as a further charge upon the property mortgaged to the society, and be treated as an additional advance, subject to the same rate of repayment as provided in the rule applicable to advances.

3. If at the first and subsequent divisions of profits, it should appear to the directors that the expenses or losses which the society has incurred anterior to such division of profits, or which in their estimation are likely to arise upon the mortgages then in force, have not absorbed the whole of the commission contributed upon advances, then the directors, with the advice of the consulting actuary, may credit the members in proportion to the number of shares which shall have been advanced to them respectively (in diminution of their future repayment subscriptions), with such a bonus out of the unabsorbed commission above referred to, as shall not exceed the bonus allotted to an unadvanced share of like standing (a).

#### XXXIV.—ADVANCES TO PURCHASE AT AUCTION.

1. Should any member, having become entitled to any advance as aforesaid, be desirous of purchasing property about to be sold by auction, and require the assistance of the society to enable him to pay the deposit money payable at such sale, the directors may, upon such member making his desire known to them, in the form (D) annexed to these rules, order the surveyor to report, and the solicitor to investigate, the conditions of sale and the title of such property, so far as the same can be ascertained, upon payment of the usual fees; and may instruct the secretary to attend such sale, and (provided such member can buy such property at a price not exceeding the sum of money the directors are willing to advance on such property) to pay the amount of deposit at such sale, the balance of the

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the locality. The principles upon which it should be regulated are set forth in "Scratchley's Practical Treatise," Appendix, pages 29 to 33.

(a) The effect of this rule is to make the society a mutual one.

purchase money to be advanced when the conveyance and mortgage are completed ; provided that, if the member shall bid a larger sum than the sum awarded by the directors, the difference between the sum awarded by them and the sum agreed to be given for the property, shall be deposited by the member in the hands of the secretary, before any deposit is paid, and the directors shall take such legal security for such sums paid on deposit as they may be advised.

2. When any member shall be desirous of building, the directors may from time to time make such advances during the progress of the building as they deem expedient, on having the amount secured on the property.

3. If any member receiving an advance for the purpose of erecting or completing the erection of any buildings shall leave the same unfinished, and shall not proceed to complete the same after the expiration of seven days' notice in writing given to the member, his executors or administrators, by leaving the same upon the premises, the society may complete the same ; and may sell the premises mortgaged, either in their incomplete state, or upon the same being completed, as aforesaid, in which case all the powers, clauses, and provisions, contained in the mortgage deed to arise and take effect, and be exercisable upon default being made in payment of any instalment, shall upon the expiration of such notice as aforesaid, arise, take effect, and be exercisable in such and the same manner, and with the same consequences in all respects as if such default had really been made.

#### XXXV.—AS TO MORTGAGES.

1. Every member executing a mortgage to the society, shall, within two days from the time of such execution, give to the secretary a written statement of any trade carried on, in or about any part of the premises comprised in such mortgage, or of the existence of any stove or furnace erected thereon, or other matter or thing which would in any way affect the validity of the policy of insurance hereinafter mentioned ; and if at any subsequent period any such trade shall be commenced, or erection made, the like statement shall be given, and the member neglecting to give such statement shall pay a fine, at the discretion of the directors, of not more than 10s. but not less than 1s.

per week for each share ; and the directors shall, if they think fit so to do, at least once in each year, appoint some competent person to obtain all the information he can, with respect to trades, &c., carried on in or about the mortgaged premises, and to report to the board accordingly.

Every member shall from time to time permit the directors or such person or persons as they appoint, to inspect the mortgaged premises, and to obtain information with respect to any trade or trades carried on therein ; or pay such fine as the directors shall think fit.

2. The repayment subscription for advances shall be made in the first calendar month, or in the first quarter (as may be agreed upon by the directors) next following the receipt of the advance, or any portion thereof, and shall continue to be so made for the full period for which the advance may have been originally taken, unless the mortgage be previously redeemed ; and in all cases, such repayment subscriptions shall be due on the first day of each month, and be respectively made thereon if it be a day of meeting, or on the first subscription meeting thence ensuing.

3. Every member obtaining an advance from the society shall be bound by and subject to these rules, and any alteration or amendment thereof, although the intent or meaning of the same or any part of them may not be fully set forth, or may be omitted in the mortgage deed or other security, and no defect or omission in any mortgage or security shall be available by any member if such defect or omission be provided for by the rules of the society.

4. Upon full payment being made of all the repayment subscriptions, interest, or other moneys secured by any mortgage in accordance with these rules and the covenants therein contained, the directors under the advice of the solicitor to the society, shall deliver up to the member by whom such mortgage was effected, or to his legal or personal representatives, as the case may be, the title deeds and other documents which have been deposited with them by such member, and shall [free of all expense to such member] endorse on his mortgage security a receipt for all the moneys intended to be thereby secured, pursuant to the Act 37 & 38 Vict. c. 42, s. 42.

## XXXVI.—SECURITY FOR ADVANCES.

[In framing this clause due regard should be paid, *inter alia*, to the Conveyancing Act, 1881, and that of 1882 now before the House.] (a)

## XXXVII.—REDEMPTION OF MORTGAGED PROPERTY.

If any member be desirous of having his property discharged from the mortgage to the society, before the expiration of the full term thereof, he shall be allowed to do so on giving a notice of two clear calendar months prior to

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(a) The rate of Discount to be allowed on future subscriptions in case of Sale under the Security clause, while not so low as to be oppressive to the member, should be such as to afford a sufficient protective margin in favour of the society.

An important case (*Re Goldsmith, Ex parte Osborne, see Digest, ante*), was decided in November, 1874, with respect to what a society is entitled to claim under a power of sale in the mortgage deed. The decision carries weight from its having being unanimously arrived at by the Lord Chancellor (CAIRNS) and the Lords Justices, a weight required, since their judgment is not altogether in accordance with previous decisions on the subject (*see Digest*). The equity of the view they took is apparent in cases where a certain sum has been advanced, on the terms that the covenanted repayments shall include both principal and interest; but where a society sells its loans to the highest bidder (a practice objectionable in many respects, though common in a number of societies all over the country), and allows the premium to be paid over a period of years together with the instalments for the cash advanced, care will have to be taken so to draw the mortgage deed and the rules in reference to this point as to remove them from the effect of this decision. Thus, where 60*l.* had been advanced on a 100*l.* share, and 40*l.* premium had been charged, instead of interest, the whole to be repayable by instalments of 10*l.* yearly, over a period of 10 years, the society, although designing to treat the instalments of premium as all due at once in the event of sale or redemption, would, if the case were one governed by *Ex parte Osborne*, find itself able to claim only the balance of the 60*l.* at any time outstanding, and not the balance of the premium-interest still unpaid. A serious position if such premium has been looked upon as profit made. It is not, perhaps, to be regretted that this decision has been come to, for it may lead not only to

the ordinary meeting at which the redemption of such mortgage is proposed to be completed ; and on payment of all repayment subscriptions and fines due in respect thereof up to the time of such redemption, and of all other contributions required by the rules (if any), and of the present value of the future repayment subscriptions (a) [calculated by the consulting actuary upon the principle of payments made at the end of each year to the end of the original term, and discounted after a rate of interest to be fixed by the consulting actuary not lower than      per cent.], together with a redemption fee of      , the directors, at the cost of the member, shall cause to be endorsed on the mortgage deed, a receipt or acknowledgment for the full payment of the amount secured in such mortgage in the form prescribed by 37 & 38 Vict. c. 42. Members giving notice of a redemption of a mortgage shall be liable to the usual fines for non-payment of the repayment subscriptions up to the time such redemption shall be completed (b).

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## GENERAL REGULATIONS AS TO THE SECURITIES.

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### XXXVIII.—POWER TO EXTEND PERIOD OF REPAYMENT.

1. A member may alter the period allowed for the repayment of an advance, subject to the consent of the directors, on giving not less than one clear calendar month's notice, provided that the new term for the repayment of the remainder of his advance be approved by the directors,

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moderation in the amount of premium charged, but also to a more rational mode of granting advances being adopted, such as suggested in the rules in the text.

(a) Where the society uses a redemption table, insert for the words between the brackets :—to be estimated by the redemption tables calculated by the consulting actuary and appended to these rules.

(b) In cases of redemption under this rule, the protective margin to the society need not be so large as in the case of sale.



and that his monthly or other repayment subscriptions for the new term be after the same rates per centum for the balance of his debt, according to the established rates for advances; the debt at the time of the alteration of the term being estimated upon a compound interest table, at such rate of interest as the consulting actuary shall certify.

2. Previously to any such alteration, the mortgagor shall furnish satisfactory evidence as to the unimpaired value of the security, and shall pay all expenses of procuring such evidence.

3. When an existing mortgage is to be altered, a percentage commission may (if the directors deem it expedient) be charged, proportionate to the remaining amount due from the borrower, for the number of additional years which he has added to the duration of the mortgage; and the commission shall be after the same rate as that for new advances.

### XXXIX.—REDUCTION OF MORTGAGE DEBT.

If any member, who has mortgaged property to the society, shall, at any period after he has reduced his mortgage debt, be desirous of procuring any portion of the premises comprised in such security to be discharged from such mortgage, the directors may, upon being satisfied that an adequate and sufficient security will remain to cover the payment of the future repayment subscriptions, discharge such portion of the said premises as they think proper.

### XL.—TRANSFER AND SALE OF ADVANCED SHARES.

1. Any member entitled to an advance shall be allowed to transfer to any other member the right of such advance, on payment of a transfer fee (c) of \_\_\_\_\_ to the funds of the society.

2. If any member who shall have obtained an advance, be desirous to sell the property mortgaged, the purchaser, on becoming a member of the society, may take the property subject to such mortgage, and thenceforth shall become

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(c) If it be thought undesirable to encourage traffic in the right to advances, the transfer fee in this clause should be fixed high.

answerable for the payment of all repayment subscriptions in arrear, and fines then due thereon, as well as for all future repayment subscriptions and fines thereon from time to time to fall due in respect to such mortgaged property ; an account of all which repayment subscriptions and fines then due and unpaid shall be made up and acknowledged (in writing) by the person proposing to receive such liabilities and property in mortgage, which said account shall be duly signed by the person so becoming a member, in the presence of the secretary, solicitor, or one of the directors of the society ; and the directors, at the request and cost of the member so transferring his interest in the mortgaged property, may then release him from all future responsibilities in respect of such property so transferred.

3. Every such conveyance to a purchaser, subject to the mortgage, shall be perused and settled by the solicitor of the society, at the expense of the mortgagor ; and shall, when executed, be delivered to the solicitor of the society, and by him deposited with the other title deeds relating to the property comprised therein, as a further security for the money secured by the mortgage.

#### **XLI.—SUBSTITUTION OF MORTGAGED PROPERTY.**

If any member be desirous of having his property discharged from the claim of the society, he may, with the sanction of the directors, transfer the same to other premises of adequate value, either belonging to himself, or to any other person willing to take the transfer of such advance, and to give security for the same, to be approved of by the directors on the report of the surveyor.

#### **XLII.—FIRE INSURANCE.**

1. All property mortgaged to the society shall be insured in pursuance of any covenant contained in the lease or deed under which such property shall be held, or as the directors shall determine ; and the secretary shall immediately effect such insurance in the name of the society, in conformity with written instructions to be furnished to him by the solicitor, or in case of neglect, shall be fined twenty shillings ; and he shall pay all premiums for insurance of mortgaged property as the same shall respectively become

due, or be fined twenty shillings for each insurance left unpaid ; and the members on whose account such premiums for insurance shall be paid, shall on demand refund the amount so paid.

2. Whenever any property mortgaged to the society shall receive any damage from fire, or any other cause for which the insurance company may be liable to give compensation, the society shall receive the amount payable for such damage so sustained from the insurance company ; the receipt of three directors, countersigned by the secretary of the society, shall be sufficient discharge to the insurance office for the money therein expressed to be received ; and the directors shall have full power to settle and adjust with the insurance office any question relating to such insurance, and the amount to be paid by the insurance office in respect of the damage done to the premises ; or to make such arrangements with the insurance office as to the rebuilding or repairing of the said premises, or relating thereto, as the directors think reasonable.

#### **XLIII.—GROUND RENT AND OTHER PAYMENTS**

When any property secured or mortgaged to the society is subject to any land or property tax, chief or ground rent, quit rent, fines, reliefs, heriots, or other payments, the member to whom the property belongs shall furnish the secretary with a statement containing the amount of such payments, the name and address of the person or persons to whom, and the day or respective days on which the same become due and payable, and shall from time to time produce to the secretary a receipt or acknowledgment thereof respectively, within fourteen days after the same became due or payable ; or in default thereof, shall pay a fine of

. In case any of the said payments be not duly made within such period as aforesaid, the directors may order the sum due to be paid out of the funds of the society, and the mortgagor shall repay the amount at the next monthly subscription meeting, together with the said fine ; and in default of payment thereof accordingly, the same shall be treated as repayment subscriptions in arrear.

## OTHER REGULATIONS AS TO SHARES.

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### XLIV.—FINES, AND POWER TO SUSPEND.

1. The fines for non-payment of unadvanced share subscriptions shall be at the rate of            per pound per month on the amount thereof.

2. The fines for non-payment of repayment subscriptions on advanced shares, shall be at the rate of            per pound per month on the amount thereof (*a*).

3. When the fines on an unadvanced share equal the amount of subscriptions paid in respect of the same, the said share shall be forfeited to the society ; and the member, to whom such share belonged shall thenceforth cease to have any interest in the funds of the society in respect to such share, but the directors may, at their own discretion, remit or waive such forfeiture, or allow a member specially to suspend his subscriptions on unadvanced shares, on such terms and conditions as they in each case may deem fit, on his making application to them for that purpose, prior to each subscription becoming due (*b*).

4. When an advance is made to a member, the directors shall have power, at their own discretion in each particular case, to allow the repayment subscriptions to be deferred for a period not exceeding two years ; provided interest at the rate of            per cent. per annum on the amount of the advance be paid monthly by the member during the time that the repayment subscriptions are so deferred. The term for which an advance is so granted shall exceed one of the terms given in the table of repayment subscriptions by the number of months that the first repayment subscription has been allowed to be so deferred, and the repayment

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(*a*) As to fines on advanced shares, see *Parker v. Butcher*, and other cases, *ante*.

(*b*) This clause will enable the directors to meet the circumstances of members who, though finding themselves temporarily unable to keep up their payments, do not wish to relinquish their shares, or withdraw from the society.

subscriptions (including principal and interest) shall be made after the rates given in the said table, from the end of the period of deferment to the close of the term of the mortgage (c).

5. If any member be in arrear in respect of his subscriptions, interest, or other sum, for more than one meeting, every payment afterwards made by such member, if not sufficient to discharge the whole amount in arrear shall be applied, first, to the liquidation of the fines incurred, and then in the liquidation of the subscriptions, interest, and other sums in arrear.

6. Members holding advances upon quarterly repayment subscriptions shall be considered to be in arrear of four months when any quarterly repayment has remained unsatisfied for the period of one calendar month after the same became due.

7. When the consulting actuary is consulted by the directors at the request of any member or by cause of the default of a member, the fees payable to the consulting actuary shall be charged against the said member, and be treated as subscriptions in arrear.

#### XLV.—ALTERATION IN RATE OF INTEREST.

The directors may, on the advice of the consulting actuary, with the sanction of a majority of the members actually present at a meeting of shareholders specially convened for that purpose, reduce the rate of interest allowed on the amounts subscribed by unadvanced shareholders (so that such decrease does not reduce the rate of interest to less than three pounds per cent. compound interest, reckoned annually on the amount of subscriptions paid by them) and thereupon shall make a relative decrease in the monthly or quarterly sums to be paid by members holding advances, or, on the contrary, may increase the rate of interest to be paid on unadvanced shares, making a corresponding increase in the sums to be paid by advanced shareholders, in such manner as shall, from time to time, be deemed expedient, just and equitable; provided that such decrease, or such increase, as the case may be, of the rates on unadvanced and advanced shares respectively, shall in all cases bear the same relative proportion to each other

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(c) As to this rule, see "Scratchley's Practical Treatise," p. 44.

as the tables herein contained for payment to unadvanced shareholders and payments by advanced shareholders, or as near thereto as possible; provided also, that such deductions or alterations shall only affect the holders of shares which shall be issued or advanced respectively, after the time of making such decrease or increase, and provided such decrease or increase, shall be first submitted to the consulting actuary, and be certified by him to be safe and equitable.

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## MANAGEMENT AND OFFICERS.

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### XLVI.—APPOINTMENT OF OFFICERS.

For the conduct and management of the affairs of the society, the following officers shall be appointed:—A board of directors, consisting of members, auditors, solicitor, secretary, and such other officers as may be deemed necessary by the board, who shall fix the amount of their salaries, fees, and other remuneration, and the duties from time to time to be performed by them respectively. The solicitor, secretary, and other officers deemed necessary by the board, and appointed by them, shall hold their respective situations at the pleasure of the board (a).

### XLVII.—OFFICERS TO GIVE SECURITY.

Every officer having the receipt or charge of any money of the society, shall give security pursuant to 37 & 38 Vict. c. 42, s. 23.

### XLVIII.—SEAL.

The common seal of the society shall bear legibly engraved on it at length the registered name of the society, and shall have for a device [*state the device*]; it shall be in the custody of [*state what officer*], and shall be affixed only

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(a) As to the officers, see "Scratchley's Practical Treatise," c. 5. The term "committee of management" may be used instead of "board of directors."

by order of the directors, entered on their minutes, in the presence of two of them, who shall sign their names as witnesses, countersigned by the secretary.

#### XLIX.—POWER OF SOCIETY TO BORROW.

1. The society may receive deposits or loans at interest from the members or other persons, or from corporate bodies, joint stock companies, or from any terminating building society, to be applied to the purposes of the society.

2. The total amount so received on deposit or loan, and not repaid by the society, shall not at any time exceed two-thirds of the amount for the time being secured to the society by mortgages from its members.

3. Every deposit book, or acknowledgment or security of any kind, given by the society for a deposit or loan, shall have printed or written therein or thereon the whole of the 14th and 15th sections of the Act, 37 & 38 Vict. c. 42.

#### L.—DIRECTORS.

1. Every director shall hold at least [one] unadvanced share.

2. One-third of the directors shall go out of office every year, but be eligible for re-election.

3. The election of directors shall take place at the annual general meeting, except in case of death, resignation, or removal during the year, when any vacancy shall be filled up by the board.

4. Any director may be removed from office at a general meeting of the society specially called for the purpose.

5. The directors shall annually appoint, out of their body, a chairman and a deputy chairman; and, in the absence of either chairman or deputy chairman, the directors shall appoint a chairman for the several meetings.

6. One of the directors (in rotation) with the secretary shall attend the meetings for the receipt of money. Any director failing to attend his rotation at the receipt meetings, or to procure a substitute, shall pay a fine of 2s. 6d.

7. The directors may divide themselves into rotas, or committees for the conduct of the business, as they think fit (such committees or rotas to be open to the other members of the board); provided however no rota shall continue longer than three calendar months at one time without some change of members.

8. The board shall, from time to time, inspect the books of the society.

9. Each director shall be paid      s. for every attendance at a board, or, in rotation, at a subscription meeting; the chairman shall be entitled to      s. per board meeting in addition.

## LI.—SURVEYOR.

1. The following fees shall be allowed the surveyor for the time being to the society :—

*(Here Scale of Surveyor's Fees.)*

2. In all cases where the surveyor is required to superintend the erection of any buildings on behalf of the society, the remuneration shall be specially agreed upon by himself and the board.

## LII.—SOLICITOR.

1. The solicitor for the time being to the society shall transact all the legal business of the society; and if any dispute arise with reference to his charges, the case shall be referred to      , whose decision shall be final and conclusive (a).

2. Previous to each annual meeting the solicitor shall attend with the auditors to inspect the condition of the mortgage deeds and other securities belonging to the society, whether in the custody of the bankers or of any other person, and shall report in writing to the directors as to the results of their inspection (b).

## LIII.—AGENTS.

The directors may, from time to time, appoint and remove any person they think expedient to act as agents.

(a) In some cases, solicitors agree to transact business for building societies at fixed charges depending on the amount of the loan. Where this is done, the scale of charges should be inserted in the rules.

(b) A periodic inspection of the securities by some person besides the auditors, professionally competent to ascertain that the documents have not been tampered with, is desirable. (See p. 250, note).



for the society, and shall fix their duties, powers, and remuneration.

#### LIV.—BANKERS.

1. The directors shall, from time to time, select the bankers of the society. No payment shall be made out of the society's funds to the amount of five pounds and upwards, except by cheque, to be signed by not less than directors, and countersigned by the secretary.

2. All money received from the members shall be paid into the bankers to the credit of the society by the secretary, or such other person as the board appoint.

3. For the payment of current petty expenses, the secretary shall, from time to time, receive a cheque of pounds, which shall be duly renewed on a proper account of his former payments, to the amount of the last cheque received by him, being made to, and allowed by the board.

4. The mortgage deeds and other securities belonging to the society shall be deposited for safe custody with the bankers, except such as the board may direct from time to time to be in the custody of the solicitor or any other officer.

#### LV.—SECRETARY.

If the secretary for the time being to the society shall neglect to attend any meetings of the society at the time named for the commencement of such meeting, without showing sufficient cause to the members then present, he shall be fined . . . He shall enter minutes of all resolutions passed at the meetings of the board in the rough minute book, and the same shall be fairly copied into another, to be read as part of the business of the next meeting, and both to be signed by the chairman. He shall keep the accounts in order, in proper books to be provided for that purpose, shall send all circulars, conduct the correspondence of the society, and perform such other duties as the directors shall require.

#### LVI.—AUDIT OF ACCOUNTS AND CONSULTING ACTUARY.

1. At the first meeting of the society, two auditors shall be chosen, one by the directors and one by the members pre-

sent, for the purpose of auditing the accounts, inspecting the mortgages and other securities belonging to the society (a), and watching over the expenses of the society, prior to the annual general meeting. The future appointments of auditors shall be made at the annual general meetings, except in the case of death during the year, when the vacancy shall be filled at the next monthly meeting by the directors and members respectively present.

2. A consulting actuary shall be appointed to whom all questions, as they arise, relating to the values of shares, redemptions of mortgages, and matters of like kind, shall be referred for settlement when the directors think it necessary.

#### LVII.—TRUSTEES.

The directors may from time to time appoint and remove trustees, for the purpose of investments in the public funds, or to be admitted as tenants in respect of copyhold or customary estate, as authorised by 37 & 38 Vict. c. 42, ss. 25 and 28.

#### LVIII.—EXTRA REMUNERATION OF OFFICERS.

The members at an annual general meeting may, with the advice of the consulting actuary, vote a sum of money to be paid to the directors and auditors for their past year's services, and likewise to the other officers of the society, over and above any salaries, fees, or other remuneration, which they may have had granted to them.

#### LIX.—INDEMNITY TO OFFICERS.

The directors, auditors, and other officers of the society shall be, and hereby are indemnified and saved harmless out of its funds and property, from all losses, costs, charges, damages and expenses, which they may incur or be put to in execution of their respective offices; and none of them shall be answerable for any act or default of any other of

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(a) Sect. 40 of 37 & 38 Vict. c. 42, directs that the mortgage deeds and other securities belonging to the society shall be produced to the auditors (see Digest, Art. 1), and sect. 16 directs that provision for that purpose shall be made in the Rules.

them, or for the insufficiency or deficiency in title or otherwise of any security whatsoever which shall be taken for the repayment of any advance or otherwise, on behalf of the society, unless the loss arising by any such means shall happen through their own wilful neglect ; nor shall they be liable for any banker, broker, or any person with whom the funds of the society shall, from time to time, be deposited or placed out for safe custody, investment, or otherwise ; nor for any involuntary loss, misfortune, or damage whatsoever, which may happen in the execution of their respective offices, or in relation thereto, respectively.

### CONSULTING ACTUARY'S CERTIFICATE.

I hereby certify that the rules and rates of the “ Permanent Building Society ” are founded upon equitable and sound principles, and may safely be adopted for its use.

Consulting Actuary.

## SCHEDULE OF FORMS.

(A.)

To the directors of the Permanent Building Society.  
Gentlemen,

I request to be admitted a member of your society in respect of share(s.) [*Class and denomination of share to be stated.*]

Dated this            day of            18 .

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

(B.)

*Form of Transfer.*

I,           , one of the members of the Permanent Building Society, in consideration of            paid to me by           , do hereby transfer my share in the said society, numbered           , to the said           , his (or her) executors, administrators, and assigns, subject to the payments, rules, and regulations prescribed by the society. And I,           , sanctioned by the board of directors, do hereby agree to accept the said share (or shares) subject to the same payments, rules, and regulations.

As witness our hands and seals, this            day of            18 .

(C.)

To the directors of the Permanent Building Society.  
Gentlemen,

I request that you will make an advance to me of £            in respect of            share(s) in the Society, the advance to be repaid in            years.

[*Here insert description of Property.*]

Dated this            day of            18 .

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

(D).

To the secretary of the                  Permanent Building Society.

Sir,—I send you the following particulars of property which I am desirous of purchasing by auction to be held at the in                  on the                  day of                  , and I request that you will take the steps contemplated by article 1 of section XXXIV. of the rules of the society.

Dated this                  day of                  18                  .

Name                  \_\_\_\_\_

Address                  \_\_\_\_\_

Occupation                  \_\_\_\_\_

*Description and extent of Property.*

Where situate—parish, county, &c. ?

The value per annum ?

By whom held ?

To what use to be applied by applicant ?

[Here *may follow* forms for conveyance, mortgage, transfer of mortgage, agreement, bond, security for deposit or loan, and other instruments.]

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For a Terminating building society, rules should be added, fixing the date at which, or specified result on the attainment of which the society is to terminate (37 & 38 Vict. c. 42, s. 5), and it may also be provided that the society may invest money with any other building society (s. 25); and that it may borrow money to the extent of twelve months' subscriptions on the shares for the time being in force (s. 15).

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## APPENDIX II.

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### REGULATIONS

UNDER THE

### BUILDING SOCIETIES ACTS.

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IN pursuance of the powers vested in me by the above-mentioned statutes, I, the Right Honourable Sir William George Granville Vernon Harcourt, one of Her Majesty's Principal Secretaries of State, hereby revoke the regulations made thereunder, and make the following regulations in lieu thereof :—

- (1.) Every application for a certificate of incorporation to a society in existence on the 2nd November, 1874, shall be made by a person authorised by a general meeting of the society, specially called for the purpose, and shall be in the Form A. annexed hereto, and shall be accompanied by the following documents :—
  - (a.) A copy of the rules of the society as they exist at the date of the application.
  - (b.) A statutory declaration by the applicant in the Form B. annexed hereto.

If the registrar at the time the application is received by him has not received from the clerk of the peace for the county in which the society is established a transcript of the certified and enrolled rules of the society, he shall make application to the clerk of the peace for the same, and if the same is not received by him within seven days of such

application, shall, as soon as practicable, acquaint the applicant for incorporation therewith, who must furnish evidence that the rules are certified as provided by 37 & 38 Vict. c. 42, s. 11, before the society can be incorporated.

- (2.) Every application for a certificate of incorporation to a society about to be established after the 2nd November, 1874, shall be in the Form C. annexed hereto, and shall be accompanied by two printed copies of the rules marked and signed, as mentioned in the said Form.
- (3.) An alteration of the rules of a society may be either—
  - (a.) A partial alteration, consisting of the addition of a new rule or part of a rule or rules to the existing rules, or of the substitution of a new rule or part of a rule or rules for any of the existing rules, or of a rescission of any of the existing rules or any part thereof without any substitution, or of more than one or all of those modes ; or,
  - (b.) A complete alteration consisting of the substitution of an entire set of rules for the existing set of rules.
- (4.) An application for the registration of a partial alteration of rules must be made by three members and the secretary of the society, and must be made in the Form D. annexed hereto, and must be accompanied by a statutory declaration in the Form E. annexed hereto, and by a printed copy of the existing rules, and by the following documents :—
  - (a.) If the partial alteration consists of the addition or substitution of a new rule or part of a rule or rules, two copies of such rule or part of a rule or rules, each copy being marked Y. and signed by each of the applicants.
  - (b.) If the partial alteration consists of the rescission of any of the rules without any substitution, two copies of the resolution for such rescission, each copy being marked Y. and signed by each of the applicants.

The registrar before registering the partial alteration of rules, shall ascertain that it is in conformity with the Building Societies Acts.

- (5.) An application for the registration of a complete alteration of rules shall be made by three members and the secretary of the society, and shall be in the Form F. annexed hereto, and must be accompanied by a statutory declaration in Form E. annexed hereto, and by a printed copy of the existing rules and by two printed copies of the new rules, each copy being marked Z. and signed by each of the applicants; and the registrar before registering the new set of rules, shall ascertain that it provides for all matters which, by 37 & 38 Vict. c. 42, s. 16, are to be provided for by rules, and is in conformity with the Building Societies Acts.
- (6.) The certificate of registry of an alteration of rules shall be delivered to the applicants attached to one of the copies of the alteration.
- (7.) The last words in the name of any society established and incorporated under the Building Societies Acts, shall be "Building Society;" and no change of name by any society shall be registered unless the new name ends with those words; and the registrar may refuse to allow the insertion in the name of any society about to be established and applying for incorporation under the said Acts, or the retention in the name of any society which seeks to change its name, of any words implying that the society is other than a building society.

#### *Change of Name.*

- (8.) Every society changing its name shall give notice to the registrar in the Form G. annexed hereto, accompanied by a statutory declaration in the Form H. annexed hereto. The registrar, before issuing a certificate of registration of change of name, shall ascertain that the new name is not identical with that of any society previously registered, or so nearly resembling the same as to be calculated to deceive; and in the event of such identity or resemblance, may require the society desiring to change its name to satisfy him



that such previously registered society is not subsisting, or, if subsisting, that it is in course of being terminated or dissolved, and consents to such registration.

*Transfer of Stock.*

- (9.) Every application to the registrar to direct a transfer of stock shall follow, as near as may be, the Form I. annexed hereto, and shall be accompanied by a statutory declaration in the Form K. annexed hereto, or as near thereto as the facts admit, and by the certificate of the stock in respect of which the application is made.
- (10.) Before making the application, the society shall submit to the registrar for examination a draft copy, on foolscap paper, written on one side only, of the proposed application and declaration.
- (11.) The registrar before directing the transfer, may require further proof of any statement in the application.
- (12.) The registrar shall give a direction in the Form L. annexed hereto so framed in each case as to suit the particular circumstances, and shall register the same and deliver the same to the applicants endorsed with the word "Registered," and duly authenticated.

*Dissolution.*

- (13.) The instrument of dissolution shall be in the Form M. annexed hereto, and shall be signed in duplicate, and accompanied by a statutory declaration in the Form N. annexed hereto.
- (14.) The registrar shall return one of the duplicates to the society, with a certificate in the Form O. annexed hereto.
- (15.) Alterations in the instrument of dissolution shall be signed, declared to, and certified in like manner.
- (16.) When a society is dissolved otherwise than by an instrument of dissolution, notice of the commencement of the dissolution shall be given to the registrar in duplicate, in the Form P. annexed

hereto, and the registrar shall return one copy to the society, endorsed with the word "Registered," and duly authenticated.

- (17.) Notice of the termination of every dissolution shall be given to the registrar in duplicate in the Form Q. annexed hereto, and the registrar shall return one copy to the society, endorsed with the word "Registered," and duly authenticated.

*Union of Societies or Transfer of Engagements.*

- (18.) Where two or more societies unite, notice shall be given to the registrar in duplicate in the Form R. annexed hereto, and the registrar shall return one copy to the united society, endorsed with the word "Registered," and duly authenticated.
- (19.) Where a society transfers its engagements to another, notice shall be given to the registrar in duplicate in the Form S. annexed hereto, and the registrar shall return one copy to the transferee society, endorsed with the word "Registered," and duly authenticated.

*Arbitration.*

- (20.) The submission of a dispute to the registrar shall be in duplicate in the Form T. annexed hereto. Where the rules of the society provide that disputes shall be submitted to the registrar, and either party to the dispute refuses or neglects to fill up and sign the portion of the submission relating to his case, the other party may send the submission to the registrar. The registrar may require either party to support any statement in the submission by statutory declaration.
- (21.) If the registrar desires the parties to appear, notice shall be given in the Form V. annexed hereto.
- (22.) The award of the registrar shall be in the Form W. annexed hereto.
- (23.) If any order for discovery be necessary, it shall be in the Form X. annexed hereto.
- (24.) The notice of change of the chief office of a society shall be in Form Y. and the certificate of registration of such change in Form Z. annexed hereto.

*Fees.*

(25). The following fees shall be payable under the Acts :—

	£	s.	d.
For the certificate of incorporation of a society	1	0	0
For the certificate of registry of an alteration of rules - - - - -	0	10	0
For the certificate of registry of a change of name - - - - -	0	10	0
For a direction to transfer stock - - - - -	1	0	0
For the certificate of registry of an instrument of dissolution, or alteration therein - - -	0	10	0
For registry of notice of the commencement or termination of a dissolution - - - - -	0	2	6
For registry of union or transfer - - - - -	0	10	0
For an award by the registrar on a dispute -	1	0	0
And, if more than one hearing or an adjournment becomes necessary, then 1 <i>l.</i> more for every hearing after the first, and for every adjournment.			
For an order for discovery - - - - -	0	10	0
For every document required to be authenticated by the registrar, not chargeable with any other fee - - - - -	0	2	6
For every inspection on the same day of documents (whether one or more), in the custody of the registrar, relating to one and the same society - - - - -	0	1	0
For every copy or extract of any document in the custody of the registrar, not exceeding 216 words 1 <i>s.</i> , and if exceeding that number 4 <i>d.</i> per folio of 72 words, in addition to the fee for authentication.			

*Authentication of documents by Registrar.*

- (26.) Every document under the Building Societies Acts, bearing the seal of the central office for registry of Friendly Societies, or the signature of the assistant-registrar of Friendly Societies for Scotland or Ireland, as the case may require, shall be deemed to be duly authenticated for the purposes of the said Acts and the regulations made thereunder.
- (27.) Where a document is tendered for registry which

appears to the registrar substantially to comply with the provisions of the Building Societies Acts the registrar may dispense with the use of any of the forms prescribed by the regulations.

- (28.) The registrar may also modify any such forms to suit particular cases, and may dispense with the obligation to supply a duplicate of any document where such obligation is imposed only by the regulations.

WHITEHALL, 1882.

For societies registered in Scotland the address "43, New Register House, Edinburgh," and in Ireland "9, Upper Ormond Quay, Dublin," will be substituted for "28, Abingdon Street, Westminster."

(FORM A).

### BUILDING SOCIETIES ACTS.

#### APPLICATION FOR A CERTIFICATE OF INCORPORATION TO A SOCIETY EXISTING ON NOVEMBER 2, 1874.

##### Building Society.

This application for a certificate of incorporation under the above mentioned Act to the Building Society, which on the 2nd of November, 1874 was a building society existing under the Act 6 & 7 Wm. 4, c. 32, is made by the person whose name is subscribed at the foot hereof.

Accompanying this application are sent a copy of the rules of the society, as they exist at the date of the application, and a statutory declaration by the applicant (in the form required by the regulations of the Secretary of State) to the effect that he was authorised to make this application by a general meeting of the society specially called for the purpose.

Signed,

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Address  
Date

To the Registrar of Building Societies,  
28, Abingdon Street, Westminster,  
London, S.W.

## (FORM B).

## BUILDING SOCIETIES ACTS.

## DECLARATION ACCOMPANYING APPLICATION IN FORM A.

## Building Society.

of do solemnly and sincerely declare that at a general meeting of the Society, specially called for the purpose, authority was duly given to me to make application for the incorporation of the said society under the above-mentioned Acts; and that the rules of the said society have been certified under the 6 & 7 Wm. 4, c. 32.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her Majesty's Justices of the Peace for the county of at in the said county, this day of 18 .

## (FORM C).

## BUILDING SOCIETIES ACTS.

## APPLICATION FOR A CERTIFICATE OF INCORPORATION TO A SOCIETY ABOUT TO BE ESTABLISHED.

## Building Society.

1. This application for a certificate of incorporation for a society intended to be established under the above-mentioned Acts as a building society, under the name of the Building Society, is made by the four persons whose names are subscribed at the foot hereof.

2. The name of the society and chief office or place of meeting for the business of the society are set forth in rule No. .

3. The manner in which the stock or funds of the society are to be raised, the terms upon which paid up shares (if any) are to be issued and repaid, and whether preferential shares are to be issued, and if so, within what limits, if any; and whether the society intends to avail itself of the borrowing powers contained in the Acts, and, if so, within what limits, which do not exceed the limits prescribed by the Acts, are set forth in rule No. .

4. The purposes to which the funds of the society are to be applied and the manner in which they are to be invested, are set forth in rule No. .

5. The terms upon which shares may be withdrawn, and upon which mortgages may be redeemed, are set forth in rule No. .

6. The manner of altering and rescinding the rules of the society, and of making additional rules, is set forth in rule No. .

7. The manner of appointing, remunerating, and removing the board of directors or committee of management, auditors, and other officers, is set forth in rule No. .

8. The manner of calling general and special meetings of the members is set forth in rule No. .

9. Provision for an annual or more frequent audit of accounts, and inspection by the auditors of the mortgages and other securities belonging to the society is made by rule No. .

10. Whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the court, or to the registrar, or to arbitration, is determined by rule No. .

11. Provision for the device, custody, and use of the seal of the society, and that it shall bear the registered name thereof, is made by rule No. .

12. Provision for the custody of the mortgage deeds and other securities belonging to the society is made by rule No. .

13. The powers and duties of the board of directors or committee of management and other officers are set forth in rule No. .

14. The fines and forfeitures to be imposed on members of the society are set forth in rule No. .

15. The manner in which the society shall be terminated or dissolved, and whether it is terminating or permanent, are set forth in rule No. .

16. In other respects the rules are in conformity with the above-mentioned Acts.

17. Accompanying this application are sent two printed copies of the rules, each marked P. and signed by each of the applicants.

(Signed)	1	Member.
	2	Member.
	3	Member.
	4	Secretary.

(a)  
Dated the                      day of                      18 .  
To the Registrar of Building Societies,  
28, Abingdon Street, Westminster, London, S.W.

(a) Here insert the address to which the answer to the application is to be sent.

(FORM D).

## BUILDING SOCIETIES ACTS.

## APPLICATION TO REGISTER A PARTIAL ALTERATION OF RULES.

Building Society. Register No. .

This application to register a partial alteration of the rules of the Building Society is made by the four persons whose names are subscribed at the foot hereof.

With this application are sent:—

- (a) A printed copy of the registered rules marked to show where and in what way they are altered:
- (b) Two printed [*or* written] copies of the alteration, each marked O., signed by each of the applicants:
- (c) A statutory declaration of an officer of this society, that in making the alteration of rules now submitted for registry, the provisions of s. 18 of the 37 & 38 Vict. c. 42, have been complied with.

(Signed)	1.	Member.
	2.	Member.
	3.	Member.
	4.	Secretary.

Address  
Date                      day of                      18 .

To the Registrar of Building Societies.  
Abingdon Street, Westminster.

(FORM E).

## BUILDING SOCIETIES ACTS.

## DECLARATION ACCOMPANYING ALTERATION OF RULES.

Building Society. Register No. .

I,                      of                      , an officer of the above-named society, do solemnly and sincerely declare that in making the alteration of the rules of the said society, the application for the registration of which is appended to this declaration, the provisions of section 18 of the 37 & 38 Vict. c. 42, have been complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her  
Majesty's Justices of the Peace for the  
county of                      at                      in the  
said county, this                      day of  
18 .

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(FORM F.)

### BUILDING SOCIETIES ACTS.

#### APPLICATION FOR REGISTRY OF COMPLETE ALTERATION OF RULES.

Building Society.                      Register No. .

1. This application for the registration of a complete alteration of the registered rules of the                      Building Society is made by the four persons whose names are subscribed at the foot hereof.

2. The complete alteration submitted for registration is the substitution of the set of rules, two printed copies of which (each copy marked P. and signed by each of the applicants) accompany this application, for the set of rules already registered.

3. The name of the society, and chief office or place of meeting for the business of the society are set forth in rule No. .

4. The manner in which the stock or funds of the society are to be raised, the terms upon which paid-up shares (if any) are to be issued and repaid, and whether preferential shares are to be issued, and if so, within what limits, if any; and whether the society intends to avail itself of the borrowing powers contained in the Acts, and, if so, within what limits, which do not exceed the limits prescribed by the Acts, are set forth in rule No. .

5. The purposes to which the funds of the society are to be applied, and the manner in which they are to be invested, are set forth in rule No. .

6. The terms upon which the shares may be withdrawn, and upon which mortgages may be redeemed, are set forth in rule No. .

7. The manner of altering and rescinding the rules of the society, and of making additional rules, is set forth in rule No. .



8. The manner of appointing, remunerating, and removing the board of directors or committee of management, auditors, and other officers, is set forth in rule No. .

9. The manner of calling general and special meetings of the members is set forth in rule No. .

10. Provision for an annual or more frequent audit of the accounts, and inspection by the auditors of the mortgages and other securities belonging to the society is made by rule No. .

11. Whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the court, or to the registrar, or to arbitration, is determined by rule No. .

12. Provision for the device, custody, and use of the seal of the society, and that it shall bear the registered name thereof, is made by rule No. .

13. Provision for the custody of the mortgage deeds and other securities belonging to the society is made by rule No. .

14. The powers and duties of the board of directors, or committee of management, and other officers are set forth in rule No. .

15. The fines and forfeitures to be imposed on members of the society are set forth in rule No. .

16. The manner in which the society shall be terminated or dissolved, and whether it is terminating or permanent, are set forth in rule No. .

17. This application is also accompanied by a printed copy of the existing rules and by a statutory declaration of an officer of the said society, to the effect that in making the alteration of rules now submitted for registration the provisions of s. 18 of the 37 & 38 Vict. c. 42, have been complied with.

(Signed)	1.	Member.
	2.	Member.
	3.	Member.
	4.	Secretary.

Address

Date

To the Registrar of Building Societies,  
28, Abingdon Street, Westminster,  
S.W.

day of 18  
N

(FORM G.)

## BUILDING SOCIETIES ACTS.

### NOTICE TO REGISTRAR OF CHANGE OF NAME.

**Name already registered.**

## Building Society.

**Register No.**

Notice is hereby given, that a meeting of the Building Society called for the purpose, held on the \_\_\_\_\_ day of \_\_\_\_\_, it was resolved by three-fourths of the members present :—

“That the name of the society be changed to Build-  
ing Society.”

} Member.  
 } Member.  
 } Member.  
 Secretary.

### Address

Date \_\_\_\_\_

day of

18

**To the Registrar of Building Societies,  
28, Abingdon Street, Westminster.**

(FORM H.)

## BUILDING SOCIETIES ACTS.

**DECLARATION AS TO CHANGE OF NAME.**

**Name already registered**

## Building Society.

Register No.

I of an officer of the above-named society, do solemnly and sincerely declare that in making the change of name, notice of which is appended to this declaration, the provisions of section 22 of the 37 & 38 Vict. c. 42, have been duly complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her  
 Majesty's justices of the peace for the  
 said county of                      at                      in  
 the said county, this                      day of  
 18                      .

## (FORM I.)

## BUILDING SOCIETIES ACTS.

## APPLICATION FOR DIRECTION TO TRANSFER STOCK.

Building Society.                      Register No.                      .

1. This application is made by the four persons whose names are subscribed at the foot hereof, being the secretary [*if not, state which other officer*] and three members of the board of directors [*or committee of management*] of the                      Building Society.

2. For the purpose of making an investment in [the public funds, the said society [*or the board of directors, or the committee of management of the said society*] did on the day of                      appoint                      of                      in the county of                      [*here name and describe all the trustees then appointed*] to be trustees.

3. On the                      day of                      the sum of                      was invested in the purchase of                      stock transferable at the Bank of England [*or Ireland*] in the names of the said trustees, and the same is still standing in their names, as follows:—[*state exactly in what name the stock stands.*]

4. The said                      is absent from England [*or Ireland*] [*or became bankrupt on the                      day of                      , or filed a petition (or executed a deed) for liquidation of his affairs by assignment or arrangement, or for composition with his creditors on the                      day of                      , or has become a lunatic, or died on the                      day of                      , or has not been heard of for                      years, and it is not known whether he is living or dead.*]

5. On the                      of                      the said society [*or the board of directors, or the committee of management of the said society*] removed the said                      from his appointment as one of the said trustees, and appointed                      [*give full name and description*] in his place.

6. Since such removal, application has been made in writing to the said *[removed trustee]* to join in the transfer of the said stock into the names of the said *[here give the names of the other trustees, and the new trustee appointed in the place of the one removed]* as trustees for the said society, but he has refused to comply *[or, has not complied]* with such application. *[This paragraph may be omitted or varied as the facts require.]*

7. This application to the registrar is made pursuant to 37 & 38 Vict. c. 42, s. 26, that he may direct the said stock to be transferred into the names of the said \_\_\_\_\_ as trustees for the society, by \_\_\_\_\_ *[this blank should be filled by the names of the surviving or continuing trustee or trustees, if any, and if they be willing and able to make the transfer; but if there be no such trustee, or if he or they refuse or be unable to make the transfer, then by the words the accountant-general or deputy or assistant accountant-general of the said bank; and a full statement of the facts and of the grounds of such refusal or inability should be made.]*

Secretary *[or officer.]*

(Seal of the Society.)

} Members of the  
Board or Com-  
mittee.

Address

Date \_\_\_\_\_ day of \_\_\_\_\_ 18

To the Registrar of Building Societies,  
28, Abingdon Street, Westminster.

The seal must be applied and witnessed in the manner directed by the rules of the society.

(FORM K.)

### BUILDING SOCIETIES ACTS.

#### DECLARATION VERIFYING STATEMENTS IN AN APPLICATION FOR DIRECTION TO TRANSFER STOCK.

Building Society.      Register No.

I \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_ do solemnly  
and sincerely declare that I am the secretary *[or other officer  
naming the office]* of the \_\_\_\_\_ Building Society.

That , , and , whose names are subscribed at the foot of the application hereto annexed, are members of the board of directors [or committee of management] of the said society.

That on the day of 18 , and therein mentioned were appointed trustees of the said society.

That on the day of 18 , the sum of was invested in the purchase of stock, transferable at the Bank of England [or Ireland] in the names of the said trustees, and the declarant believes that it is still standing in their names, as follows:—[State as in Form I.]

That the said is absent from England [or as the case may be.]

That on the day of , the said was removed from his appointment as one of the said trustees, and was appointed in his place.

That since such removal, application has been made in writing to the said (a) to join in the transfer of the said stock into the names of the said (a) as trustees for the said society, but he has refused to comply [or, has not complied] with such application. [This paragraph may be omitted or varied as the facts require.]

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of  
 Her Majesty's justices of the peace for  
 the said county of at  
 in the said county, this day of  
 18 .

(a) These blanks will be filled as in Form I.

---

(FORM L.)

BUILDING SOCIETIES ACTS.

DIRECTION BY THE REGISTRAR TO TRANSFER STOCK.

Whereas it has been made to appear to the registrar of building societies that stock, transferable at the Bank of England [or Ireland] is now standing in the names of , and , who are trustees for the Build- ing Society, incorporated under the above-mentioned Acts.



2. The number of members is                      the number of shares  
is                      the amount standing to the credit of the  
members in the books of the society is                      .
3. The society owes to depositors the sum of                      and to  
other creditors the sum of                      and such sums shall be  
paid out of the first moneys which shall be received by the  
trustees hereby appointed [*or as the case may be.*]
4. After payment of the claims of depositors and other  
creditors, the funds and property of the society shall be  
appropriated and divided among the members thereof in  
the proportion of the amount standing to each member's  
credit in the books of the society [*or as the case may be.*]
5. *A., B., and C.* [*giving full names, addresses, and descrip-*  
*tions*], are hereby appointed trustees for the special pur-  
pose of the dissolution, and shall be remunerated by the  
sum of                      *l.* [*or as the case may be.*]

[*Here insert any other provisions the society desires to make as  
to the dissolution.*]

Number of shares held  
by members signing.

Signatures of members,

Signatures of trustees.

(Common seal of the society.)

The seal must be applied and witnessed in the manner directed  
by the rules of the society.

---

(FORM N.)

## BUILDING SOCIETIES ACTS.

### DECLARATION TO ACCOMPANY INSTRUMENT OF DISSOLUTION.

Building Society.      Register No.      .

I                      of                      , an officer of the above-named society,  
do solemnly and sincerely declare that the instrument of dissolu-  
tion (a) appended to this declaration is signed by not less than  
three-fourths of the members, holding not less than two-thirds of  
the number of shares in the said society.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her  
 Majesty's justices of the peace for the  
 said county of                      in the said  
 county, this                      day of  
 18                      .

(a) Or the alteration of the instrument of dissolution.

---

(FORM O.)

### BUILDING SOCIETIES ACTS.

#### CERTIFICATE OF REGISTRATION OF INSTRUMENT OF DISSOLUTION.

The registrar of building societies in [England, Scotland, or Ireland] hereby certifies that the foregoing instrument of dissolution (a) of the                      Building Society, established at                      in the county of                      , is registered under the Building Societies Acts.

This                      day of                      18                      .

[To be authenticated as provided by Regulation 26.]

(a) Or alteration of the instrument of dissolution.

---

(FORM P.)

### BUILDING SOCIETIES ACTS.

#### NOTICE OF COMMENCEMENT OF DISSOLUTION, WHERE NO INSTRUMENT OF DISSOLUTION IS EXECUTED.

Building Society.                      Register No.

To the Registrar of Building Societies,  
 28, Abingdon Street, Westminster.

Notice is hereby given, that, in pursuance of the rules of the above-mentioned society, or of the following resolution duly



passed in pursuance of the rules of the society on the  
day of .

[*here state the terms of the resolution (if any) for dissolving the  
society*]

The dissolution of the society commenced on the  
day of .

(Seal of the society.)

Name and address to  
which registered copy }  
is to be returned.

Date 18 .

The seal must be applied and witnessed in the manner directed  
by the rules of the society.

---

(FORM Q.)

## BUILDING SOCIETIES ACTS.

### NOTICE OF TERMINATION OF DISSOLUTION.

Building Society. Register No.

To the Registrar of Building Societies,  
28, Abingdon Street, Westminster.

Notice is hereby given, that, pursuant to the instrument of  
dissolution [*or rules, as the case may be*] of the above-mentioned  
society, its liabilities have been discharged, and its assets collected  
and distributed, and all other things done required to be done in  
respect of the dissolution of the said society, and that the disso-  
lution thereof is now terminated.

{ The trustees for the purpose  
of the dissolution,  
[*or, three members, and the  
secretary if the dissolution  
is not by instrument.*]

Name and address to  
which registered copy }  
is to be sent.

Date 18 .

N 3

## (FORM R.)

## BUILDING SOCIETIES ACTS.

## NOTICE OF UNION OF SOCIETIES.

(A)	Building Society.	Register No.	.
(B)	Building Society.	Register No.	.

To the Registrar of Building Societies,  
28, Abingdon Street, Westminster.

Notice is hereby given, that at a general meeting convened for the purpose and held pursuant to 37 & 38 Vict. c. 42, s. 33, on the        day        18        , the (A) Building Society above mentioned, passed by three-fourths of the members, holding not less than two-thirds of the whole number of shares, present at such meeting, the following resolution to unite with the (B) Building Society :—

*[Here give the words of the resolution as passed.]*

And that at a general meeting convened for the purpose and held pursuant to 37 & 38 Vict. c. 42, s. 33, on the        day of        18        , the said (B) Building Society passed, by three-fourths of the members, holding not less than two-thirds of the whole number of shares, present at such meeting, the following resolution to unite with the said (A) Building Society :—

*[Here give the words of the resolution as passed.]*

And that the following are the terms of the said union :—  
*[State the terms.]*

And that it is intended that the united societies shall henceforth be called the        Building Society.

Accompanying this notice is a copy of the rules intended to be henceforth adopted by the united society [which are the rules of the        Building Society.]

(Seal of the (A) Building Society.)

(Seal of the (B) Building Society.)

Name and address to }  
which registered copy }  
is to be sent.

Date        18        .

The seals must be applied and witnessed in the manner directed by the rules of the societies respectively.

## (FORM S.)

## BUILDING SOCIETIES ACTS.

## NOTICE OF TRANSFER OF ENGAGEMENTS.

Building Society. Register No. .

To the Registrar of Building Societies,  
28, Abingdon Street, Westminster.

Notice is hereby given, that at a general meeting convened for the purpose and held pursuant to 37 & 38 Vict. c. 42, s. 33, on the       day of       18       , the above-mentioned society resolved, by three-fourths of the members, holding not less than two-thirds of the whole number of shares, present at such meeting, to transfer its engagements to the       Building Society, Register No.       .

And that at a general meeting convened for the purpose and held pursuant to 37 & 38 Vict. c. 42, s. 33, on the       day of       18       , the said       [Transferee] Building Society resolved, by three-fourths of the members, holding not less than two-thirds of the whole number of shares, present at such meeting, to accept such transfer and to undertake the engagements of the said       [Transferor] Building Society.

And that the following are the terms of the said transfer:—  
[State the terms.]

(Seal of the Transferor Society.)

(Seal of the Transferee Society.)

Name and address to }  
which registered copy }  
is to be sent.

Date       18       .

The seals must be applied and witnessed in the manner directed by the rules of the societies respectively.

## (FORM T.)

## BUILDING SOCIETIES ACTS.

## SUBMISSION OF A DISPUTE.

Dispute between

and the  
Building Society. Register No. .

[The above-named parties agree to submit the dispute between them to the Registrar.

Signature of Claimant. (Seal of Society.)] (a)

The said submits as follows:—

1. That he is a member of the said society [*or claims by or through a member, or under the rules, as the case may be.*]
2. That [*give particulars of the claim or contention.*]
3. That his case is proposed to be supported by the evidence of the following witnesses and by the production of the following documents;—[*give list.*]

Signature

Address

Date 18 .

The said society submit as follows:—

1. That they dispute the claim [*or contention*] of the said on the following grounds:—[*State grounds of dispute.*]
2. That their case is proposed to be supported by the evidence of the following witnesses, and the production of the following documents:—[*give list.*]

(Seal of Society.)

Date 18 .

(a) The part within brackets is not necessary where the rules direct disputes to be referred to the registrar.

The seal must be applied and witnessed in the manner directed by the rules of the society.

## (FORM V.)

## BUILDING SOCIETIES ACTS.

## NOTICE OF HEARING.

Dispute between and the Building Society.

Take notice, that the registrar of building societies will proceed to hear and determine the matter in dispute, which has been

referred to the registrar pursuant to the said Acts on  
the            day of            next, at            o'clock, at 28, Abingdon  
Street, Westminster [*or as the case may be*].

Dated            day of            18            .

[*To be authenticated as provided by Regulation 26.*]

(FORM W.)

### BUILDING SOCIETIES ACTS.

#### AWARD OF REGISTRAR.

In the matter of a dispute between            and the  
Building Society, Register No.            , referred to the registrar  
pursuant to the above mentioned Acts.

The registrar of building societies in England [*Scotland or  
Ireland*] awards as follows:—

[*here state the terms of the award*]            day of            18

[*To be authenticated as provided by Regulation 26.*]

(FORM X.)

### BUILDING SOCIETIES ACTS.

#### ORDER FOR DISCOVERY.

In the matter of a dispute between            and the  
Building Society, Register No.            .  
referred to the Registrar pursuant to the above-mentioned Acts.

The registrar of building societies in England [*Scotland or  
Ireland*] orders and directs as follows:—

1. That, within fourteen days from the service of this order,  
the said            [*society or name of party*] do deposit at  
[*state where*] for inspection by the parties the following  
documents:—[*state the documents.*]
2. That, on the            day of            next, at            o'clock,  
[*(a) an officer of the Society*] do appear at the  
place above-named, and make discovery of all things

within his knowledge [(a) as such officer] relative to the following matters :—[*state the matters as to which discovery is granted.*]

Date                      day of

[*To be authenticated as provided by Regulation 26.*]

(a) These words will be omitted if the discovery is to be made by the other party to the dispute.

(FORM Y.)

### BUILDING SOCIETIES ACTS.

#### NOTICE OF CHANGE OF CHIEF OFFICE.

Building Society.      Register No.      .

To the Registrar of Building Societies in England.  
Notice is hereby given that the Registered Chief Office of the  
Building Society established at (a)                      in the  
county of                      is changed to the office or place following :

*Secretary.*

Date                      18      .

(a) State present Registered Chief Office.

(FORM Z.)

### BUILDING SOCIETIES ACTS.

#### CERTIFICATE OF CHANGE OF CHIEF OFFICE (a).

The registrar of building societies in England hereby certifies that the registered chief office of the                      Building Society, established at                      in the county of                      , is changed from the date hereof to the office or place following :

This                      day of                      , 18      .

[*To be authenticated as provided by Regulation 26.*]

(a) This form is prescribed by the Schedule to the Building Societies Act, 1877. See p. 58, *ante*.

## APPENDIX III.

---

### ACT OF SEDERUNT

#### REGULATING THE PROCEEDINGS IN LIQUIDATIONS IN THE SHERIFF COURTS OF SCOTLAND, UNDER THE BUILDING SOCIETIES ACT, 1874.

---

EDINBURGH, 17th March, 1882.

WHEREAS by "The Building Societies Act, 1874," 37 & 38 Vict. c. 42, s. 32, sub-sect. 4, it is enacted that a society under the said Act may terminate or be dissolved "by winding up either voluntarily under the supervision of the court, or by the court, if the court shall so order, on the petition of any member authorised by three-fourths of the members present at a general meeting of the society specially called for the purpose to present the same on behalf of the society, or on the petition of any judgment creditor for not less than fifty pounds, but not otherwise ;" and that "general orders for regulating the proceedings of the court under this section may be from time to time made by the authority for the time being empowered to make general orders for the court :"

And whereas by sect. 4 of the said statute, it is enacted that the court in this Act means :—

"In England the county court of the district in which the chief office or place of meeting for the business of the society is situate ; in Scotland the Sheriff's court of the county in which such office or place of meeting is situate :"

The Lords enact and ordain as follows :—

1. All applications presented to the court for the winding up of a society registered under the said Act, either voluntarily under the supervision of the Sheriff court, or by the court, shall be by petition, in form as nearly as may be of petitions under the Act 39 & 40 Vict. c. 70 (Sheriff Court Act, 1876), and the court shall order service and advertisement thereof in the *Edinburgh Gazette*, and such further advertisement if any as the court may consider necessary, and shall appoint the said petition to be heard on such early day as may be suitable.

2. The said petition shall be printed, and every shareholder and creditor of the company shall be entitled to receive from the solicitor of the petitioner a copy thereof on demand at his office.

3. The court on the day appointed may hear the petitioner's proof in support of the petition, and may also hear any parties interested in support thereof or in opposition thereto, and also any application which may follow thereon in the course of the winding up, either in open court or in chambers, and may order such answers as may be deemed necessary ; and may adjourn the hearing ; and after such inquiry, by proof or otherwise, as may be deemed necessary, the court may order the society to be wound up, or may dismiss the petition, or may make such other order as may be just.

4. The court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or members, as proved by sufficient evidence ; and may direct meetings of the creditors or members to be summoned, held, and conducted in such manner as may be directed, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court. In the case of creditors regard is to be had to the value of the debt due to each creditor ; and in the case of members, to the number of votes conferred on each member by the regulations of the society, or failing such regulations, to the number of shares held by each member.



5. For the purpose of winding up a society, a liquidator shall be appointed. The shareholders may nominate a liquidator at any meeting held by them, and called in terms of the 32nd section of the statute 37 & 38 Vict. c. 42, for the purpose of resolving to wind up the society under supervision of the court, and of presenting a petition to the court to that effect ; and the court shall confirm the nomination so made, unless sufficient cause to the contrary be shown. If the court do not confirm the nomination, or if no such nomination has been made before the presenting of the petition, the court shall, at the hearing of the said petition, or at any subsequent time, nominate a liquidator, either provisionally or otherwise. In the case of winding up by the court, the liquidator shall be nominated by the court. The court may also determine whether any and what security shall be given by the liquidator ; and every appointment of a liquidator shall be advertised in such manner as the court may appoint.

6. Any liquidator may resign ; or may be removed by the court on due cause shown ; and any vacancy in the office of a liquidator shall be filled up by the court. There shall be paid to the liquidator such salary or remuneration by way of percentage or otherwise as the court may direct.

7. When in course of winding up the society, it shall be necessary to carry on the business thereof for a time, or to make up titles to heritable property, or to compromise claims with contributories, these powers shall only be exercised with the sanction of the court, obtained upon a note presented to the court setting forth the grounds upon which the powers are asked for. The court may, on the presentation of such note, order such intimation thereof as shall be deemed suitable and expedient in the circumstances. And further, it shall be competent to the liquidator to apply to the court for instruction and direction in regard to any matter wherein, in his judgment, such instruction and direction are necessary.

8. The liquidator shall have power to appoint a law agent to assist him in the performance of his duties, and also with sanction of the court to appoint a factor for taking charge of or managing any of the properties of the society.

9. Where a society is being wound up voluntarily under the supervision of the court, the liquidator may from time to time during the continuance of such winding up call general meetings of the members of the society ; and in the event of the winding up continuing for more than one year the liquidator shall call a general meeting of the members at the end of the first year, and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing his acts and dealings, and the manner in which the winding up has been conducted during the preceding year.

10. The liquidator shall, as soon as may be after an order is made for winding up a society, make up and lodge in process a state showing—

- (1) The liabilities and assets of the society in detail.
- (2) The number of members, and the amounts standing to their credit in the books of the society.
- (3) The liabilities of members of the society in terms of sections 13 and 14 of the Building Societies Act and of the rules of the society.
- (4) The claims of depositors and other creditors, and the provision to be made for their payment.
- (5) The sums to be repaid to the members, if any, after payment of the debts due by the society.

And such state may be objected to by any person having interest, and may be amended from time to time. And the court may, after such notice or advertisement as may be thought proper, and after hearing any party or parties sanction and approve of such state, or disapprove thereof, and if the same be sanctioned and approved of, the court may authorise the funds to be distributed in terms of such state ; and thereafter, on being satisfied that payment has been made to the creditors of the society and depositors so far as possible, and to the members of the society in terms of the said state, or when any sum or sums payable to any member or members of the society have not been claimed, that such consignment thereof has been made by the liquidator as the court may direct, the court shall declare the winding up of the said society to be at an end, and the society dissolved, discharge the liquidator of his whole actings and intromissions, and appoint his bond of caution, if any, to be delivered up.

11. The accounts of the liquidator shall be audited annually. The audit shall be made by such person as the court may select, whether he be an auditor of court or not, and the auditor shall report to the court the audit so made. If it shall appear to the auditor that any payment by the liquidator should be disallowed, or that any charge has been incurred, as against the estate, which was unnecessary, or that any sum ought to have been, but is not brought into account, he shall, in his report, bring the same under the notice of the court, setting forth the grounds of his opinion, and the court shall pronounce judgment upon the matter so reported upon as may seem just.

12. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the society of the costs, charges, and expenses incurred in winding up the society in such order of priority as may be considered just.

13. The liquidator shall lodge all money received by him on account of the society in one of the banks in Scotland established by Act of Parliament or Royal Charter, in a separate account, or on deposit, in his name as such liquidator, within seven days after the receipt thereof, unless the court has otherwise directed. If the liquidator shall keep in his hands more than 50% of money belonging to the society for more than seven days he shall be charged in his account with a sum at the rate of 20 per cent. per annum on the excess of the said sum of 50% for such time as it shall be in his hands beyond the said seven days, and the court may, in respect of any such retention, disallow the salary or remuneration of such liquidator, or may remove him from his office.

14. In every case where the court shall order service, such service may be made by registered letter if the court authorise it.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and to be published in common form.

JOHN INGLIS, *I.P.D.* \*

\* "*In præsentiâ Dominorum.*"



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